TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 218 92.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED MAY 4, 1903.

(18,143.)

(18,143.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 313.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Caption	*a*	1
Appellant's abstract of record	1	1
Indictment	1	1
Minutes of testimony before grand jury (omitted in printing)	2	—
Motion to set aside indictment (part omitted in printing)	5	2
Demurrer to indictment (" " ")	7	3
Plea of not guilty	10	4
Bill of exceptions	10	4
Testimony of John French (part omitted in printing)	10	4
Exhibit 1—Certificate of deposit	11	5
Testimony of Wm. H. Dent	12	5
Exhibit 2—Comptroller's certificate, August 6, 1864	12	5
3—Comptroller's certificate, Feb. 24, 1883	13	6
Testimony of Otto Arneson (part omitted in printing)	13	6
E. R. Baker (" " ")	17	8
W. E. Lucas (omitted in printing)	45	—
C. H. Graves (" " ")	48	—
Ray T. Lewis (" " ")	49	—
M. Norris (" " ")	50	—
Frank Parkinson (" " ")	50	—
C. R. Carpenter (" " ")	50	—
John G. Stradley (" " ")	51	—

JUDD & DETWEILER, PRINTERS. WASHINGTON, D. C., OCTOBER 25, 1901.

	Original.	Print
Testimony of Frank B. Warren (omitted in printing)	52	—
G. J. Lomen (" ")	53	—
A. W. Grow (" ")	54	—
Knudt Thompson (" ")	54	—
E. H. Van Antwerp (" ")	55	—
Wm. V. Baker (" ")	56	—
Wm. H. Klemme	58	18
A. J. Arneson (omitted in printing)	59	—
J. M. Akers (" ")	59	—
W. H. Dent (recalled), (part omitted in printing)	60	19
Fred R. Akers (omitted in printing)	79	—
A. M. Perry (" ")	80	—
J. R. Rollins (" ")	81	—
C. Christen (" ")	81	—
J. C. Webster (" ")	81	—
Stipulation as to books of the bank	81	21
Testimony of E. W. D. Holway (parts omitted in printing)	82	21
E. J. Curtin (omitted in printing)	90	—
Henry Elvidge (" ")	91	—
Statement as to Exhibits 226 to 239	91	22
Exhibit 226—Letter, Easton to Perry (omitted in printing)	92	—
227—Letter, Easton to Perry, September 16, 1896 (omitted in printing)	93	—
228—Letter, Easton to Burdick, September 1, —— (omitted in printing)	94	—
229—Letter, Easton to Burdick, September 5, 1896 (omitted in printing)	94	—
230—Letter, Easton to Burdick, September 6, 1896 (omitted in printing)	95	—
231—Letter, Easton to Burdick, September 8, 1896 (omitted in printing)	96	—
232—Letter, Easton to Burdick, September 10, 1896 (omitted in printing)	98	—
233—Letter, Easton to Burdick, September 10, 1896 (omitted in printing)	98	—
234—Letter, Easton to Burdick, September 13, 1896 (omitted in printing)	99	—
235—Letter, Easton to Burdick, September 14, 1896 (omitted in printing)	100	—
236—Letter, Easton to Burdick, September 16, 1896 (omitted in printing)	101	—
237—Letter, Easton to Burdick, September 1, 1896 (omitted in printing)	102	—
238—Letter, Easton to Burdick, September 21, 1896 (omitted in printing)	102	—
239—Letter, Easton to Burdick, Nov. 10, 1896	103	22
Plaintiff rests	104	22
Motion of defendant for verdict in his favor	104	22
Instructions asked by defendant (part omitted in printing)	106	23
Instructions given	108	24
Verdict	115	29

	Original.	Print
Motion in arrest of judgment...(part omitted in printing)..	116	30
Motion for new trial.....(" " ")..	118	31
Judgment.....	122	31
Notice of appeal, &c.....	123	32
Statement as to bill of exceptions.....	123	32
Assignment of errors..... (parts omitted in printing)..	124	32
Index to abstract..... (omitted in printing)..	131	—
Appellee's additional abstract.....(" ")..	133	—
Testimony of Wm. H. Dent.....(" ")..	134	—
Otto O. Arneson.....(" ")..	151	—
E. R. Baker.....(" ")..	159	—
W. E. Lucas.....(" ")..	164	—
G. H. Graves.....(" ")..	168	—
Ray T. Lewis.....(" ")..	172	—
M. Morris.....(" ")..	175	—
Frank Parkinson.....(" ")..	176	—
C. Carpenter.....(" ")..	178	—
John G. Stradley.....(" ")..	178	—
Frank B. Warren.....(" ")..	180	—
A. W. Grow.....(" ")..	181	—
Knudt Thompson.....(" ")..	183	—
G. J. Lomen.....(" ")..	185	—
E. H. Van Antwerp.....(" ")..	189	—
Wm. V. Baker.....(" ")..	190	—
J. M. Akers.....(" ")..	191	—
J. N. Houck.....(" ")..	192	—
Fred R. Akers.....(" ")..	193	—
A. M. Perry.....(" ")..	194	—
J. C. Rollins.....(" ")..	197	—
C. Christen.....(" ")..	197	—
J. C. Webster.....(" ")..	199	—
E. W. D. Holway.....(" ")..	200	—
E. J. Curtin.....(" ")..	215	—
Harry Elvidge.....(" ")..	219	—
Index.....(" ")..	221	—
Appellant's abstract controverting that of appellee (omitted in printing).....	222	—
Submission.....	224	34
Opinion.....	224	34
Judgment.....	232	38
Petition for writ of error.....	233	38
Order allowing writ of error.....	235	40
Writ of error.....	236	40
Bond.....	237	41
Citation and service.....	240	43
Assignment of errors.....	241	43
Clerk's certificate.....	244	45
Statement of errors and designation by plaintiff in error of parts of record to be printed.....	245	45

a Pleas before the supreme court of Iowa in a cause therein tried and determined, wherein The State of Iowa was plaintiff and James H. Easton defendant and appellant.

Be it remembered that on the 13th day of December 1899, there was filed in the supreme court of Iowa, by said appellant, a printed abstract of the record, the same being in the words and figures following, to wit:

1 In the Supreme Court of Iowa, January Term, 1900.

THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant. } Criminal.

Appeal from district court, Fayette county—Hon. A. N. Hobson, judge.

J. B. Powers, Dan. Shea, Clements & Clements, and H. T. & C. W. Reed, for appellant.

Milton Remley, attorney general; H. P. Hancock, county attorney; E. P. Johnson, and James H. Trewin, for appellee.

Appellant's Abstract of Record.

At the May term, 1898, of the district court of Iowa in and for Winnesheik county, and to wit: on June 1st, 1898, the grand jury of said county, duly empaneled and sworn, (Thomas Rice selected as foreman), returned to said court the following

Indictment

against the defendant James H. Easton, omitting caption and formal parts), charging

That said James H. Easton on or about the 21st day of August, A. D. 1896, in the county of Winnesheik and State of Iowa,
2–4 aforesaid, being then and there engaged in the banking business as an officer, to wit: president, of the bank known and styled as the First National Bank of Decorah, located and doing business as a bank of deposit and banking in the city of Decorah, in the county of Winnesheik and State of Iowa, did as president of said bank as aforesaid, unlawfully, wilfully, knowingly and feloniously permit, connive at, encourage, accept, and receive on and for deposit in the said bank known as the First National Bank of Decorah, as aforesaid, a certain deposit in lawful paper money, a more particular description of which is to these grand jurors unknown, of and in the sum of one hundred dollars, of and from one John French, being then and there the property of said John French and of the value of $100, the said bank being then and there insolvent, and the said James H. Easton, the defendant aforesaid, then and there well knowing the said bank was insolvent, contrary to

and in violation of the statute of the State of Iowa in such case made and provided.

Endorsed "A true bill" and signed "Thomas Rice, foreman of the grand jury."

Which indictment was duly presented in open court in the presence of the grand jury, and marked "filed" by the clerk of said court on said June 1st, 1898.

* * * * * * *

5 The defendant was duly arraigned upon said indictment at the September term 1898 of said court, and at the November term 1898 thereof, upon his application, the place of trial was changed to Fayette county.

At the March 1899 term of the district court in and for Fayette county the cause came regularly on for trial before Hon. A. N. Hobson, judge of said court, and on the eighth day of said term, to wit: March 14, 1899, the defendant filed a motion to set aside the indictment upon the following grounds, to wit:

* * * * * * *

6 Second.

1st. That it appears from said indictment that the deposit therein referred to was accepted by this defendant as president of a national bank, and received on deposit in and for a national bank.

2nd. That the law of Iowa under which said indictment is found, in so far as it attempts to make the acceptance and receipt of deposits in and for national banks, by their officers and agents a crime, is contrary to and in violation of the Constitution and laws of the United States; to wit:—the fourteenth amendment to said Constitution and the national banking laws of the United States, and void in

(*a.*) That it unlawfully discriminates against said banks, and their officers and agents, and makes an act by them an offence which is not so if done by corporations other than banking corporations or by persons not conducting a banking business in said State;

(*b.*) That it is an attempt to regulate and control the business of such national banks, their officers and agents, which is a matter that is within the exclusive control of the Congress of the United States, and upon which it has legislated;

(*c.*) That it attempts to prohibit, and punish by fine and imprisonment, the doing of an act by an officer or agent of a national bank, which act is expressly authorized and permitted by the laws of the United States aforesaid;

3rd. That this court has no jurisdiction to inquire into, hear, try or determine the act of this defendant alleged in said indictment to have been done by him for

That said act was done by this defendant under and by virtue of, and in pursuance of the laws of the United States aforesaid, and not otherwise, and that said indictment and all process based thereon are wholly void,

7 4th. That said law of the State of Iowa is void for the further reason that it is not uniform in its operation, and is in violation of the constitution of the State of Iowa in that it unlawfully discriminates against banking corporations and their officers and other persons engaged in the banking business, and makes the incurring of an indebtedness by them on account of a deposit accepted or received by them an offence, which is not an offence if done by other persons or corporations.

Which motion and each division and ground thereof was overruled by the court; to which ruling the defendant at the time duly excepted.

The defendant thereupon filed the following

Demurrer to the Indictment,

viz:

* * * * * * *

2nd. That said indictment contains matter, which if true, would constitute a legal defense or bar to the prosecution.

* * * * * * *

8 7th. That said First National Bank of Decorah, Iowa, is and was at the time alleged in said indictment, a national bank; which bank could only lawfully exist or do a banking business under and by virtue of the laws of the United States, and that this defendant is, and was at the time alleged in said indictment, president of said bank, and as such accepted and received on deposit in and for said bank the alleged deposit therein referred to.

8th. That the acts of the defendant stated in the indictment constitute no crime, because the statute of the State of Iowa prohibiting the receiving of deposits by a bank when it is insolvent, applies only to banks incorporated or doing business under the authority of the laws of this State and does not apply to national banks incorporated, organized or doing business under the acts of Congress.

9th. That this court has no jurisdiction to inquire into, hear, try, or determine the act of this defendant in so accepting the said deposit in and for said national bank for

That said act of defendant in so accepting and receiving the said deposit in and for said bank is an act which is expressly authorized and permitted by the laws of the United States under which said First National Bank of Decorah, Iowa, is organized or incorporated.

10th. That the law of Iowa under which said indictment is found, if it applies to national banks, or makes the accepting or receiving of deposits by said banks and their officers and agents an offence, is in violation of the Constitution and laws of the United States in

(*a.*) That it abridges the privileges and rights of such banks and their officers as given them by the laws of the United States

9 and deprives the officers and agents of said banks of the equal protection of the laws as guaranteed to them by the Constitution of the United States.

(*b.*) That it unlawfully discriminates against said banks and their officers, and makes an act done by them an offence, which is not so

made, if done by corporations other than banks or by persons not conducting a banking business;

(*c.*) That it is an attempt to regulate and control the business of national banks, organized and existing under the laws of the United States, which is a matter within the exclusive control of the Congress of the United States and upon which it has legislated;

(*d.*) That it attempts to prohibit, and punish by fine and imprisonment, the accepting or receiving deposits for and in a national bank by the officers and agents thereof, which acts are expressly authorized and permitted by the laws of the United States under which such banks are organized and authorized to transact the business of banking;

(*e.*) That it is repugnant to and in direct conflict with the Constitution and laws of the United States, and is wholly void.

11th. That said act is void for the further reason that it is in violation of the constitution- of the United States and of the State of Iowa in that it is not uniform in its operation and unlawfully discriminates against banking corporations and their officers and persons doing banking business, and makes an offence of the incurring of an indebtedness by them for and on account of a deposit accepted or received by them, which act is not an offence if done by other corporations or their officers, or persons not doing a banking business, in the State of Iowa.

Which demurrer and each ground thereof was overruled by the court; to which ruling the defendant at the time duly excepted.

Thereupon the defendant pleaded to said indictment that
10 he was not guilty of the offence charged therein.

A jury was thereupon duly empaneled to try said cause. Upon such trial the following testimony was adduced and proceedings had, all of which is incorporated in a bill of exceptions duly signed by said judge and made a part of the record of said cause, to wit:

Plaintiff's Testimony.

(The pages given are of the transcript of the testimony as made by the reporter.)

JOHN FRENCH (page 22): My age is 59; reside in Frankville, Winnesheik Co., Iowa, know defendant J. H. Easton and have for twenty-five years, and know the First National Bank of Decorah; that was located on Water street in the city of Decorah, Winnesheik county, Iowa. On August 21st, 1896, I went into the First National Bank of Decorah and gave the defendant, James H. Easton, one hundred dollars; he counted it, put it on a slip, and handed it to some of his clerks who drew up a certificate and handed it to Mr. Easton and he signed it and gave it to me. Mr. Easton took the money; it was paper money, in five, ten and twenty dollar bills. Plaintiff's Exhibit "I" shown the witness. That is the paper I got from Mr. Easton at that time; after signing it he handed it to me.

Plaintiff offers same in evidence marked Plaintiff's Exhibit "I."

* * * * * * *

11 The plaintiff then read in evidence its Exhibit 1, which is as follows:

STATE OF IOWA.

The First National Bank of Decorah.

$100. AUGUST 21, 1896.

John French has deposited in this bank one hundred dollars, payable to the order of himself six months from date in current funds on the return of this certificate properly endorsed, with interest at the rate of 4 per cent. per annum. No interest after maturity. This certificate will not be paid before due.

Certificate of deposit. Not subject to check.

No. 17689.

JAS. H. EASTON, *Pres.*

That money I gave Easton belonged to me and was worth one hundred cents on the dollar. I have received from the receiver, Mr. Dent, 40 per cent. at different times after August 21, 1896.

* * * * * * *

12 WILLIAM H. DENT (page 36): Am receiver of the First National Bank of Decorah, and have been since November 24, 1896. As such receiver the assets of the bank came into my possession about December 4, 1896; I have been in possession of the assets and the books and papers of the bank since that time. I have in my possession the certificate of authority of the First National Bank of Decorah to do business. The witness produces such certificate and it is marked Plaintiff's Exhibit No. "2." This I found among the papers of the bank.

Plaintiff offers same in evidence as its Exhibit No. "2," which is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *August* 6, 1864.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the First National Bank of Decorah, in the village of Decorah, in Winnesheik county, Iowa, has been duly organized under and according to the requirements of an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, Hugh McCulloch, Comptroller of the Currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, in said State, is authorized to commence the business of banking under the act aforesaid.

s

13 In testimony whereof, witness my hand and seal of office this sixth day of August, 1864.

[SEAL.] HUGH McCULLOCH,
Comptroller of the Currency.

I also have in my possession the certificate of renewal of the charter of the First National Bank of Decorah, which I now produce.

Plaintiff offers it in evidence as its Exhibit No. "3," which is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *February* 24, 1883.

Whereas, by satisfactory evidence presented to the undersigned it is made to appear that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, Iowa, has complied with all the provisions of an act of Congress enabling national banking associatians to extend their corporate existence and for other purposes, approved July 12, 1882.

Now, therefore, I, John J. Knox, Comptroller of the Currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, Iowa, is authorized to have succession for the period specified in its amended articles of association, viz., until the close of business February 24, 1903.

In testimony whereof, witness my hand and seal of office this 24th day of February, 1883.

[SEAL.] JOHN J. KNOX,
Comptroller of the Currency.

I also have in my possession as receiver the directors' minute books of the First National Bank of Decorah. These are the books. They are designated as Record A, First National Bank of Decorah, and Record B, First National Bank of Decorah.

14 OTTO ARNESON (page 53): Reside in Decorah, and have lived there 31 years. I worked in the First National Bank of Decorah for eight years; am personally acquainted with James H. Easton and know his signature. Am personally acquainted with T. W. Burdick and know his signature. As an employé of the First National Bank of Decorah I have handled Records A and B of that bank, and have written in B some. I have seen Mr. Easton refer to these books and handle them.

* * * * * * *

(Page 57:) Q. You may examine the signature or name on the bottom of page 13, Record A, and state whose signature it is.

* * * * * * *

A. It is James H. Easton's.

Q. You may state whether or not these two books, Records
15 A and B, were among and part of the record books of the First National Bank of Decorah during the time you were working there?

* * * * * * *

A. They were.

* * * * * * *

The following-named witnesses testified to depositing money in the First National Bank of Deborah and receiving certificates of deposit therefor, and that no part of such deposit was paid prior to August 21, 1896. The names of the persons depositing and the date and amount of such deposits are and their certificates therefor are as follows:—

Name of depositor.	Date of deposit.	Amount.
Tollef Svenningsen	July 17, 1896	$2,040 00
W. P. McClaskey	July 3, 1896	1,000 00
Ammi Smith	June 1, 1896	350 00
Peter V. Holverson	July 11, 1896	700 00
Mrs. P. McCusker	July 17, 1896	25 00
Henry B. Deters	March 21, 1896	200 00
Sarah M. Larson	Dec. 4, 1895	175 00
Sarah M. Larson	May 16, 1896	300 00
Sarah M. Larson	June 15, 1896	11 00
Elizabeth Wendling	June 4, 1896	1,000 00
16 Elizabeth Wendling	July 17, 1896	3,000 00
Geo. W. Yarwood	June 6, 1896	100 00
Geo. W. Yarwood	Aug. 8, 1896	200 00
M. H. Tveter	Aug. 15, 1896	200 00
Ole O. Hakaason	July 8, 1896	80 00
Ole O. Tolpaug	June 6, 1896	330 00
John O. Tveter	Feb. 28, 1896	100 00
Jas. B. Tillinghast	April 25, 1896	410 00
O. V. Wingard	Jan. 14, 1896	312 00
O. V. Wingard	Oct. 4, 1895	156 00
Jas. B. Tillinghast	Feb. 12, 1895	275 00
(This was paid Oct. 12, 1896.)		
Peter P. Feifer	Nov. 14, 1895	270 40
" "	May 8, 1896	104 21
" "	April 6, 1896	85 14
" "	March 26, 1896	62 04
" "	Jan. 20, 1896	191 60
" "	Dec. 4, 1895	90 55
" "	Jan. 23, 1896	480 45
Joseph M. Lennon	Feb. 21, 1896	420 24
(Paid in full Aug. 22, 1896.)		
Nels Jorgeson	May 23, 1896	400 00
" "	May 23, 1896	2,000 00
Andrew H. Vigenes	Dec. 24, 1895	75 00
B. J. Given	March 14, 1896	225 00

* * * I have made an examination of the books of the bank to ascertain the names of persons to whom it was indebted on August 21, 1896, on time certificates. I have also examined the books and prepared an itemized statement of individual deposits subject to check, demand certificates and part payments thereon, and time certificates of deposit, sundries credit, bills payable and bills rediscounted at the close of business August 21, 1896. I have made the computation carefully, and know the statement to be correct. Exhibit "42" contains all these matters.

17 Exhibit "42" is offered in evidence by plaintiff.

The entire assets of the bank as shown by its books and this exhibit on the morning of Aug. 21, 1896, were $368,249.32, and its total liabilities were $269,259.75.

I have made a transcript from the books of the bank showing its transactions of Aug. 21, 1896. It is Plaintiff's Exhibit "44" and is correct. On that day the bank received on deposit $100 from John French, for which it gave a time certificate of deposit to him. The total amount of business of the bank that day is

Amount received	$4,574.88
Amount paid out	4,556.16

This transcript is made from and the items are shown in General Cash Book 46, page 457, of August 21, 1896.

(Page 1431:) I have made a computation of the amount of bills receivable owing to the bank that were past due August 21, 1896; the amount was $162,279.05. In the year 1891 there was past due $1,858.65; at the close of the year 1892 there was past due $2,659.30; at the close of 1893 there was past due $8,347.14; at the close of 1894, there was past due $76,945; at the close of the year 1895 there was past due $120,520.07. From the end of the year 1895 to August 21, 1896, bills and notes matured to the amount of $41,758.98.

E. R. BAKER (page 157): Live in Chicago, formerly lived in Decorah, Iowa, for 26 years. I was employed in the First National Bank of Decorah first as messenger, afterwards as book-keeper, then teller, assistant cashier, and June, 1894, was appointed cashier in place of Capt. Gardner, deceased, who died May 20th, 1894, and was cashier until the bank suspended, November 10th, 1896. James H. Easton acted in the capacity of president of the bank during all this time; George Q. Gardner was cashier of the bank from 1884 until his death.

Directors' Minute Book A, is one of the books of the bank. I have seen the book there ever since I have been in the bank; at different times.

18 Plaintiff offers in evidence pages 7, 8, 9 and 10, Directors' Minute Book A, as follows:

Articles of association of the First National Bank of Decorah, entered into by and between the undersigned on this 30th day of April, 1864, for the purpose of organizing a banking association to carry on the business of banking under an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863.

First. The name and title of this association shall be the First National Bank of Decorah, Iowa.

Second. The place of business of this association shall be at Decorah, Winnesheik county, Iowa.

Third. The board of directors shall consist of five stockholders. The first meeting of stockholders for the election of directors shall be held at Decorah on the 30 day of April, 1864.

Fourth. The regular annual meeting of the stockholders for the election of directors shall be on the second Tuesday of January each year.

Fifth. The capital stock of this association shall be fifty thousand dollars, but the same may be increased from time to time, subject to the limitations of the act, to any sum not exceeding one hundred and fifty thousand dollars. The shares of stock to be one hundred dollars each.

Sixth. The board of directors shall elect one of their number to be president, and they shall have the power to appoint a cashier and such other officers and clerks as may be required to transact the business of the association. The board of directors shall by their by-laws specify by what officers of the association or committee of the board the banking business of the association shall be transacted; to make all the by-laws that may be required to regu-
19 late the business of the association, and generally to do and perform all acts which are proper to be done by a board of directors.

Witness our hands this thirtieth day of April, 1864:

JAMES H. EASTON.
A. BRADISH.
ARCHIBALD HOWELL.
C. E. DICKERMAN.
S. W. MATTESON.
GEORGE BOLLES.
WM. C. ADSIT.
JAMES HUNTER.
C. N GODDARD.
C. J. HENRY.
WM. H. BURFURD.

Acknowledged by each of these before

E. M. FARNSWORTH,
Notary Public.

Of the foregoing signatures I know those of James H. Easton, A. Bradish, Archibald Howell, C. E. Dickerman, S. W. Matteson, James

Hunter, C. N. Goddard, and C. J. Henry to be the genuine signatures of said parties respectively.

Plaintiff also offers and reads pages 11 and 12 of said book as follows:

Organization Certificate of the First National Bank of Decorah, Iowa.

We, whose names are specified in article four of this certificate have associated ourselves for the purpose of transacting the business of banking under an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States stocks, and provide for the circulation and redemption thereof" approved February 25, 1863.

First. The name and title of this association shall be the First National Bank of Decorah, Iowa.

Second. The said association shall be located in the village of Decorah, Winnesheik county, Iowa, where its operations of discount and deposit shall be carried on.

Third. The capital stock of said association shall be fifty thousand dollars, divided into five hundred shares of one hundred dollars each. This association shall commence business on the first day of July, 1864.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

20	James H. Easton	Decorah	425
	Alonzo Bradish	"	10
	Archibald Howell	"	10
	S. W. Matteson	"	10
	C. E. Dickerman	"	10
	George Bolles	"	10
	James Hunter	"	5
	Wm. C. Adsit	"	5
	Wm. H. Burfurd	"	5
	C. N. Goddard	"	5
	Charles J. Henry	"	5

Fifth. The said association is to commence on the ——

Sixth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

Witness our hands and seals this ——

Signed by each of the above-named parties.

(Page 223:) The First National Bank of Decorah kept a book called a General Daily Balance Book No. 2, which was in use by the bank on August 21, 1896, and prior thereto, and up to the time of the suspension of the bank in November, 1896; that is one of the regular books of the bank. It is a book of original entry so far as the balances are concerned, which are extended each day from the cash book. This book was made up in the bank under my direction and that of the president and officers of the bank. These entries

under the date of August 1896 were made in the usual course of the business of the bank.

Q. State in a general way what the usual course of the business of the bank was and as to the method of keeping its books; tell what books were kept and what they were for?

A. We kept a general cash book, in which the general transactions were entered; also a deposit book in which we entered the deposits and checks each day; also a general ledger, in
21 which we posted all the items from the general cash book; a general balance book and an individual balance book. This book designated general daily balance book shows at the close of business each day the condition of the bank as it appears from its book. This General Balance Book No. 2 shows the balances of the various other books, and the resources and liabilities of the bank on August 21, 1896. The book-keeper would take from the entries in the general cash book the various items making up the day's business, and making the proper additions and deductions from the various accounts would extend the balance into the general balance book, and this balance book would show the amount in dollars and cents of outstanding certificates on a given date. It also shows the amount of other liabilities of the bank, such as bills payable, bills rediscounted; it also shows the assets of the bank, such as bills receivable, and other assets whatever they may be.

Cross-examination.

It shows the general balances of the different accounts of the bank upon the different days indicated, under proper headings; and these balances are made up from the daily transactions of that day. These are the original entries of the balances as they appear here. This balance book shows the assets and liabilities of the bank. The entries under the head of "Resources" show the assets of the bank, and those under the head of "Liabilities" show the bank's liabilities.

Redirect examination:

The balances which were carried over to August 21, 1896, are those with which the bank closed business on August 20.

Q. Will you please read to the jury the various items showing the resources and liabilities of the First National Bank of Decorah, Iowa, as appears from this Daily Balance Book No. 2 at the close of business August 21, 1896?

A. I will. They are as follows:

22 *Resources.*

Bills receivable	$240,714 29
Real estate and mortgages owned	10,244 15
Overdrafts	1,723 11
5 per cent. redemption fund	900 00
Stocks and bonds	61,905 00
Winnesheik County warrants	103 65
Banking-house	16,000 00

Cash on hand		16,524 20
Due from reserve agents, American Exchange National Bank, New York, (special)		2,430 00
First National Bank, Chicago		414 30
Commercial National Bank, New York		872 52
Merchants' National Bank, St. Paul		139 34
United States bonds, with Treasurer of the United States, to secure circulation		20,000 00
		$371,970 56

From the total of the above should be deducted the following items:

Overdraft, American Exchange National Bank, New York	$65 37	
Part payment bills receivable	3,456 53	
		3,521 90
Total amounts		$368,448 66

Liabilities.

Individual deposits subject to check	$38,288 68	
Demand certificates of deposit	15,361 11	
Time certificates of deposit	176,264 68	
Sundries credit	3,681 61	
Bills payable	16,000 00	
Bills rediscounted	2,500 00	
Circulation	18,000 00	
	$270,096 08	
Deduct part payment on certificates	733 70	
		269,232 38
Assets over liabilities as shown by books		$99,215 28

23 The Government bonds are deposited with the Treasurer of the United States to secure the circulation of the bank, and are held by him in trust for the bank. The circulation is the national bank notes furnished by the Government to the bank to circulate as money.

Q. You may state what this item $240,714.29, bills receivable, is made up of?

A. Notes, for the most part, and discounts. This items of "stocks and bonds" among the assets were bonds of various corporations purchased by the bank, also stock of various corporations. This item among the liabilities of individual deposits subject to check was accounts of depositors subject to check; there were perhaps a hundred or more of depositors whose balances made up this total. This item of demand certificates, $15,361.11, were deposits for which we had issued certificates payable on demand. The item of time certificates, $176,264.68, represented deposits made for a fixed time, six

months or a year as the case might be. I should say there were over three hundred persons holding time certificates making up this total. The item, sundries credit, were temporary credits to different parties, placed there for convenience, which were liable to be drawn at any time. The bank was a borrower of money during the year 1896 up to August.

Q. About how much did it use, and for how long was it borrowed during this time?

A. I can only speak from recollection; probably $20,000, perhaps more, sometimes less; the amount varied at different times. As a rule they were short loans; occasionally ran a few months. The capital of the bank is used in its business and is included in the resources. The resources of the bank as above given include the amount represented by the capital stock. Under the national bank law a bank is required to lay aside a certain portion of
24 & 25 its profits in a fund known as the "surplus fund," and the undivided profits and surplus fund on August 21, 1896, were represented in these assets which I have named. The resources of the bank at the opening of business August 21, 1896, as shown by the books were..... $368,448.66
And its liabilities at the same time as shown by its books were..... $269,467.37

This includes an error in part payment of a certificate of deposit not entered on books. All of the transactions of the bank and all of its property are represented on its books. These certificates here (shown in the above table) are included in one or the other of the items of demand certificates or time certificates of deposit. The limit of loans to individuals by the bank as allowed by law is ten per cent. of the capital stock; the capital stock of this bank was $75,000. Among the stockholders of the bank August 21, 1896, that I remember, were T. W. Burdick, George Q. Gardner, deceased, and James H. Easton. Mr. Easton was the largest stockholder of the bank during all of the time I was connected with it. He owns nearly two-thirds of the stock.

The State offers in evidence so much of Daily Balance Book No. 2, identified by the witness, Baker, as shows the assets and liabilities of the bank on August 21, 1896, heretofore read to the jury by Mr. Baker, and it is agreed that a transcript of the items referred to and read by the witness Baker may be made from the books offered, and be used in place of the book.

(Page 285:) It was customary for the bank to carry in cash 15 per cent. of its deposits; that was the requirement of the law, but it varied from this more or less. Among the assets of the bank on August 21, 1896, were $35,700 in bonds, and $7,100 of stocks of the Iowa and Minnesota Investment Co., and these appeared upon the books of the bank and continued among the assets of the bank until it closed.

* * * * * * *

26 & 27 These bonds appear upon the books of the bank by number, and were a part of its assets on August 21, 1896, and included in the items of "stocks and bonds" owned by the bank. The bank obtained these bonds from James H. Easton. It also owned five certificates of stock of the same company, aggregating $7,100 which was also a part of the bank's assets on August 21, and included in the items of stocks and bonds.

* * * * * * *

28 The book here marked "General Ledger F" is one of the books of the bank; it is posted from the general cash book. The books here marked "Cash Books 39, 42, 43, 44, 45 and 46" are cash books kept by the First National Bank of Decorah in the usual course of its business. The book marked "Discount Register 7" is also one of the books of the bank.

* * * * * * *

I have known Mr. Easton a great many years.

Q. What did Mr. Easton do in and about the bank during the years 1894, 1895 and 1896?

A. He was president and manager; he was there practically all the time except short trips he took away from Decorah, and

29–33 when at Decorah he was in the bank as manager thereof. When he was there no one else did anything, practically, in regard to the management of the bank.

* * * * * * *

34 I have known the First national bank, of which James H. Easton was president, and of its doing business there upwards of twenty-five years, and up to the time of the suspension of the bank in November 1896. The general character of the business conducted was receiving deposits, loaning money, selling drafts, and foreign exchange, and doing a general banking business; and it continued to conduct such business up to the time of its suspension, November 10, 1896. On August 21, 1896, and for several months before and after, and until the bank closed, I was at the counter a good part of the time; checked up the books every night, and looked after some of the bills. Mr. Easton was general manager of the business, had charge of all the loans and transactions which made up the bulk of the business of the bank. I can say further that I signed drafts and certificates as they were issued from day to day; Mr. Easton also did that from time to time.

* * * * * * *

35 (Page 838:) Pages 224, 225, 226, 227 and 228 of Directors' Minute Book B of the First National Bank are in my handwriting; that entry was made at the time of the transaction in the usual course of the business of the bank. The signature of James H. Easton thereto attached is in the handwriting of the defendant Easton.

The State offers these pages of the book in evidence. Objected to by defendant as incompetent, not the best of evidence. Overruled, and defendant excepts.

The pages are as follows: "Special meeting of the board of directors of the First National Bank of Decorah, held on Tuesday, March 17, 1896. The following directors were present: Henry Paine, B. Anundsen, T. W. Burdick, James H. Easton, E. R.
36 Baker; James H. Easton in the chair and E. R. Baker acting as secretary. Lease of the Freeport paper mill to Francis Hickman for one year from March 16, 1896, read and approved. The letter of the Comptroller of the Currency under date of March 9, 1896, relative to the report of the bank examiner made February 21, 1896, placed before the board for consideration and action and reply. A full reply to same, taking up each item in rotation, was signed by all the directors to be forwarded to the comptroller, a copy of which is retained on file.

"The following motion was made by T. W. Burdick, and adopted. Resolved that Fred S. Easton, cashier of the Black River national bank, be and is hereby authorized and requested to confer with Hon. Jas. H. Eckles, Comptroller of the Currency, regarding the subject of correspondence by the comptroller with the president of the First National Bank of Decorah; reference being made to the comptroller's office letter dated March 9, 1896.

"The following resolution was presented and unanimously adopted.

"Whereas, James H. Easton has conveyed by warranty deed, dated March 16, 1896, to the First National Bank of Decorah, certain real estate to secure the payment of his certain four promissory notes of $7,500 each, which were given to redeem and in substitution for certain stocks and bonds held by said bank, to wit: One hundred fifty shares of the Sault Ste. Marie Falls Water Co. stock, $15,000; and one hundred fifty shares Chicago Mining and Reduction Co. stock, $15,000; guaranteed by said Easton;

"Now, the said conveyances of said real estate are accepted by the bank on condition that upon payment *of* said company of said four notes aforesaid the real estate shall be reconveyed to said James H. Easton by said bank. The said bank will proceed to sell said real estate, or parts thereof, from time to time, as opportunity
37–39 offers, and apply the proceeds to the payment of said indebtedness. The list of lands and description are as follows:

Description.	Acres.	Estimated value.
* * * * * * *		

"And whereas, James H. Easton is liable as principal and guarantor to the First National Bank of Decorah on sundry other notes and bills, it is hereby ordered and agreed that his offer of a trust deed be accepted, conveying to this bank the north half of sec. 8, 98, 10, valued at $8,000, as collateral security for any of said liabilities. In case of need the said Easton be allowed to elect upon which and for which liability the said conveyance shall protect and apply."

* * * * * * *

40 The bonds of the Iowa and Minnesota Investment C
were turned into the bank to take the place of an indebte
ness of James H. Easton; that indebtedness originated at the time
and in the amounts as follows, to wit: May 6, 1892, $4,190.32; Fe
15, 1893, $1,692.90; May 19, 1893, $4,964.35; June 28, 1893, $5,901.64
June 28, 1893, $2,971.17; Sept. 14, 1893, $2,152.55; Nov. 10, 189
$1,915.34; Nov. 27, 1893, $2,050.47; April 30, 1894, $1,933.97; an
there is $10,000 more running back to June 25, 1884, making in a
$37,772.68.

* * * * * * *

(Page 1017:) There was no material change either way in th
condition of the bank from August 21, 1896, until it closed, excep
that the liabilities were reduced and there would be a correspondin
difference or reduction of the assets.

(Page 1175:) The assets of the bank decreased from Augus
21, 1896, to November 10, 1896, $21,338, and the decrease i
41 liabilities was $19,600. Practically all of the assets that wer
in the bank when it closed were there August 21, 1896.

Q. I call your attention to Cash Book 45; the entry on page 13
in regard to the $33,500, stocks and bonds of the Iowa and Minn
sota Investment Co. Now I ask you to state whether or not th
book shows that on the same date James H. Easton took out of th
bank certain notes which he was owing it, and also certain note
which other parties were owing to the bank, and which were amon
the assets of the bank at that time.

A. I was present in the bank at the time and Mr. Easton took ou
the notes referred to at page 134 of this cash book; that entry wa
made under his direction.

The plaintiff offers in evidence pages 134 and 135 of the cash boo
showing the transaction just testified to by the witness.

* * * * * * *

Witness reads from the book that stocks and bonds are charge
with Iowa and Minnesota Investment Co. stocks and bonds, tota
$33,500, and bills receivable with notes of James H. Easton fo
$7,500; that bills receivable were credited with notes of James H
Easton for $27,600, and of other parties about $13,100.

Q. You may state in round numbers what the transactio
amounted to.

* * * * * * *

A. About $40,000. (Page 1215:) I have made a computation
the liabilities of the bank which were matured on August 21, 189
the total is $67,743.61. The items making up the total liabiliti
of the bank due August 21, 1896, are as follows:

42 & 43	Demand certificates	$14,732.4
	Individual deposits subject to check	38,288.0
	Sundries credit	3,681.0
	Time certificates matured and not presented	11,040.9
	Total	$67,743.0

The available cash and exchange on hand at that time was $20,380.37.

(Page 1402:) Prior to Capt. Gardner's death my best recollection is that Mr. Easton was absent from the bank from a third to a half of the time. When he was at home he was in the bank all the time, and had more or less to say about the business of the bank; looked after the reports to the comptroller and things of that sort. The total indebtedness of Geo. Q. Gardner to the bank at the time of his death, including his direct obligations and paper on which he was liable as a member of the firm and guarantor, amounted to $96,829.17. $30,000 of that was paid after his death from life-insurance money, and I think a small item of $200 or $300, besides. Aside from that no other portion of that indebtedness has been paid up to this time. There were two notes taken up by some real estate in Howard county, I think; they amount to $4,815, and that real estate was a part of the assets of the bank August 21, 1896.

Cross-examination:

This $4,815 in notes was not a part of the assets during the year 1896, but the real estate taken for it was. The deed of this land was taken before Capt. Gardner's death but it was not entered upon the books until afterwards. This $96,000 of Gardner's indebtedness was besides this $4,815.

* * * * * * *

44 Prior to Gardner's death, when Easton was absent he was in California part of the time; other times in the East, and in Duluth and other places. His health was quite poor. His daughter was also sick and died in New York State; Mr. Easton was there at the time of her death, and was absent some weeks; I can't say any nearer than that. In the spring of 1894 prior to Gardner's death he was in Minneapolis and Duluth and was gone for some weeks; he was not at home at the time of Gardner's death. I did not know of Gardner's being sick at all prior to his death. He died in the bank building; I can't say what time of the day; he was found there early in the morning, one Sunday morning; he was in in the bank doing business on Saturday, and he acted on the part of the bank in taking these obligations that I have just detailed upon which he was liable. He was cashier of the bank and had been for about ten years. For the $30,000 of life insurance there was taken up of his notes, and I presume surrendered to him, note of Wm. Kennedy, bank No. 28485, amount $5,000; note of John Frank, bank No. 28486, amount $5,000, and his own notes aggregating $30,250. The reports of the condition of the bank were made to the Comptroller of the Currency five times a year, on the call of the comptroller. The bank

45–57 examiners used to examine the bank for the last two years twice a year, and prior to that once. He examines the assets of the bank in detail, makes a report to the comptroller as to the assets and liabilities at the close of business on a certain day. He also examines some of the books of the bank. The reserve agents before making any loans to their country correspondents

under the law require a resolution by the board of directors, authorizing the officers of the bank to make such loans, and in compliance with their instructions we passed that resolution at a meeting of the board. I have been engaged in the banking business over twenty years. It is quite customary for banks to borrow money at certain seasons of the year. It is very largely done by most country banks at certain seasons of the year. The custom of the First National Bank of Decorah was that it aimed to keep its legal reserve up to the legal requirements, but sometimes it went below and sometimes above; it varied, and that variation is in accordance with the business of the bank from day to day. I continued to work in the bank from August 21, 1896, up to the time it suspended. It never refused to pay any of its obligations that were matured when presented up to that time, Nov. 10, 1896.

* * * * * * *

58 W. H. KLEMME (page 670): Live in Ridgeway; lumber merchant. Have known James H. Easton and the First national bank 25 years. I had some money on deposit in the bank on August 21, 1896; I had a conversation with Easton about it after the bank closed about a month. I went to see him relative to some transactions of transferring some of his property in Winnesheik county; the matter didn't look quite straight to me and I wanted some explanation of Mr. Easton relative to his home and some lands in Winnesheik county that were deeded in 1893 or 1894. I spoke to him about this and asked him to explain, and he said — could explain that very easily; that prior to 1893 they had a good deal of money in the bank; I think he said $200,000 or $250,000, on which they were paying interest; that it was impossible to make loans to amount to anything in Decorah, and that they had to go somewhere else to use the money; then he spoke about Superior and the Sault, and Minneapolis and St. Paul, and I think Des Moines; also about some pine lands that they had bought amounting to $60,000 or $65,000, that was burned over by fire which damaged it entirely. Also that George Q. Gardner, while cashier of the bank, made investments that turned out bad; as result of this and of the hard times they couldn't realize upon this property, and the result was that the bank was in bad shape; that was the words he used. Mr. Easton wanted to hold up the bank and do what he could for it, and he went and deeded some of this property to his brother with the understanding that he was not to put those deeds on record, because Mr. Easton expected some day that the bank would get on its feet again and the deeds would never be recorded. He said they were paying four per cent. interest on deposits to the depositors as I understood him.

59 Cross-examination:

(Page 676:) At this time I had the conversation with Mr. Easton; it was at his house, he was up around the house but I think was complaining of being sick. He didn't say where the pine land was, nor the amount of it, the number of acres, nothing of the kind.

* * * * * * *

60&61 W. H. DENT recalled:

* * * * * * *

62 (Page 1262:) I have been engaged in the banking business since 1875; and from 1883 to November, 1895, was president of the Le Mars national bank, in this State. Am familiar with the banking business, private and national. As receiver of the First National Bank of Decorah, I came into possession of its books, and these books here which have been identified by the witnesses, Arneson and others, are the books of that bank. After I took possession of the bank I examined the books to see what the assets were; I examined the papers and assets, and all the books of the bank, such as teller's, cash books, balance books, ledger, register and all the books and papers connected with the bank; I have frequently examined these books that are here. I have examined them with a view of ascertaining the financial condition of the bank; also the various accounts appearing on the books; also the notes, securities and other assets—in fact I have been examining them ever since I have had possession. Have made careful examinations of the books and assets of the bank on August 21, 1896, and afterwards; I have made in-
63–69 quiries in regard to the value of each item of the assets, and have endeavored to examine the property and get information from people familiar with the property. I have been to Duluth and examined the Longview property; I didn't examine the property in Superior.

Q. What examination have you made to ascertain the financial responsibility of the various persons who were owing the bank?

A. I have endeavored to see each party, if I could; have written to them frequently; have inquired of different people about them; in many cases have gone to the court-house to see if they had any real estate and the condition of their property. I have done this as to all the parties who were owing the bank, except as to those who paid up promptly.

* * * * * * *

70 Q. You may state whether or not you made investigations into the financial standing of James H. Easton, the defendant?

A. Yes sir, I asked Mr. Easton himself if he was able to liquidate his debt at the bank, or any part of it; also had an examination of the ten counties of northwestern Iowa to see if he had any real estate in his name, and I made inquiries of others that I believed might know something about his affairs.

Q. What was the information you got from these sources as to whether or not he had any property?

Objected to by defendant as incompetent, hearsay.
Overruled, and the defendant excepts.

A. He had no property.

Q. What did Mr. Easton himself tell you?

A. He stated he had no property whatever; was absolutely without property, living upon charity.

—. You may state from the investigations you made and inquiries made and statements made to you by defendant, whether or not claims of several thousand dollars could be made against James H. Easton August 21, 1896, by execution or otherwise?

Objected to by defendant as incompetent, the witness is not competent, he states no facts upon which he can state an opinion; and hearsay.

Overruled, and the defendant excepts.

A. He was absolutely execution-proof August 21, 1896.

I found among the assets of the bank four notes of $7,500 each of James H. Easton, secured by a mortgage upon the real estate in Howard county and a lot in Bozeman, Mont. I secured abstracts of title and interviewed several real-estate men to ascertain the
71–75 value of this security, and discussed the matter thoroughly with Mr. Easton. I effected a compromise of a part of these claims and took an absolute title to the land from Mr. Easton; I compromised three of the $7,500 notes, aggregating $22,500; then I compromised three other notes aggregating $7,500, making a total of $30,000; and one of the four notes that you first mentioned is still in contest in the district court in Howard county between myself and James H. Easton and others.

* * * * * * *

76 & 77 Q. You may state if you know what the condition of the First National Bank of Decorah was on August 21, 1896, as to being solvent or insolvent.

* * * * * * *

A. It was insolvent on August 21, 1896.

* * * * * * *

78 I have paid three dividends to creditors of the First National Bank of Decorah since I took possession; one of twenty and two of ten per cent. each. The last dividend was paid in June, 1898; up to that time I had collected about
79 & 80 $95,000 in round numbers of the assets, and up to the present time something over $100,000. The remaining value of the assets would be about $175,000 in round numbers; I mean face value of all, good and bad. The face value of the assets at the time I took possession was about $329,543; the total amount collected by the receiver up to the middle of February 1899 was $103,107, from which should be deducted acquired assets such as premiums, interest, etc., $18,148, leaving a balance of $84,559. This balance deducted from the total sum of the assets at the date of suspension leaves a balance of $244,584. This is the balance that might be shown from the books at that date; offsets and losses deducted, $59,940; this will leave the face value of the assets at $184,644. Now I will give you another explanation of the remaining assets as follows. Bills receivable on hand, face value, $130,534; other assets, face value, $54,110.

* * * * * * *

81 *Stipulation.*

(Page 1012:) It is agreed by the parties that the books purporting to be the books of the First National Bank of Decorah which have been identified upon the trial by the witness, are the books of the First National Bank of Decorah and made in the ordinary
82-87 course of the business of said bank; that said books show a continuous course of dealings with persons generally, and that the charges and entries therein made were made at the time of the transactions therein entered; the entries in said books shall be considered as verified by the clerks who made them to the effect that they believe them to be just and true. This admission shall not apply to the directors' minute books, judgment dockets, nor the book identified by the witness Arneson as one of the private books of James H. Easton.

E. W. D. HOLWAY (page 1039): Age 46, reside in Decorah, have for 32 years; occupation banker. Have been employed in the Winnesheik County bank for 28 years, and am at present one of the partners of said bank and its cashier. I am acquainted with the value of commercial paper, such as notes and mortgages; the members of the firm of the Winnesheik County bank own real estate; those members are C. J. Weiser and his two sisters and myself. I am acquainted with the value of real estate in Winnesheik county. We buy and sell notes at the Winnesheik County bank. Have known James H. Easton 25 or 30 years. I make it a practice to ascertain the financial condition of individuals that come into our bank to talk with me, and in a general way am acquainted with the financial standing of people in Winnesheik county.

* * * * * * *

88 I have examined the books of the First national bank since Aug. 21, 1896, to ascertain the financial condition of the bank. I cannot tell how many times. After the bank failed I went down with Gen. Stone (the bank examiner) and examined his list of assets and reported to the directors my opinion of the condition of the bank. I don't know how many times I have examined it since.

* * * * * * *

89 Q. State if you know what the condition of the First national bank was on August 21, 1896, as to being solvent or insolvent?

* * * * * * *

A. It was insolvent.

Q. (Page 1126:) From your examination how long had it continued to be so?

* * * * * * *

90 A. Several years.

* * * * * * *

91–102 The plaintiff offers in evidence each of the following letters as its Exhibits "226" to "239" inclusive. Each exhibit is shown the witness, E. R. Baker, and he says (beginning at page 1258) "The signature to each letter is that of James H. Easton."

* * * * * * *

103 (EXHIBIT "239")—CIRCULAR LETTER.

James H. Easton, president. N. H. Nelson, ass't cashier.

E. R. Baker, cashier.

The First National Bank of Decorah.

DECORAH, IOWA, *Nov.* 10, 1896.

DEAR SIRS: We are pained to inform you that owing to the steady shrinking of deposits and continued withdrawal of cash with inability to collect and realize anything upon our outstanding bills receivable and loans due us, we have been compelled to suspend payment. The bank is now in the hands of the national
104 bank examiner. In due course you will be advised of our intended future action.

Very respectfully, JAMES H. EASTON, *P't.*

Hon. T. W. Burdick, Sault Ste. Marie, Mich.:

The bank examiner (Gen'l Stone), finds our legal reserve only $42.00 short tonight. You understand that 'tis owing to my inability and the weakness of other stockholders, in meeting the assessment, which makes me throw up the sponge.

Frank Perry notifies me that suit will be brought against me on your $2,500 note due them, if not paid before the 15th inst. You can better understand my feelings and mental and physical condition than I can tell you.

J. H. E.

Plaintiff rests.

Defendant offered no testimony.

The foregoing is an abstract of all the testimony adduced upon the trial of said cause. The same is incorporated in a bill of exceptions duly signed by the judge and made part of the record of said cause.

At the close of the testimony the defendant filed a motion to direct a verdict in his favor and that he be discharged from custody upon the grounds:

1st. That the undisputed testimony affirmatively shows that the said First National Bank of Decorah, Iowa, was on August 21, 1896, a banking association, duly organized under and in pursuance of the laws of the United States, and that a certificate had been duly issued to said bank by the Controller of the Currency of the United States, in pursuance of the laws thereof, authorizing it to do a gen-

eral banking business, including the acceptance and receipt
105 of deposits at Decorah, in Winnesheik county, Iowa, as authorized by such laws of the United States, and that said bank, was on said August 21st, 1896, then doing such banking business at said place under and in pursuance of, and by virtue of such laws, and said certificate of the Controller of the Currency of the United States and not otherwise.

2nd. That this defendant was on said August 21st, 1896, the duly appointed and qualified president of said First National Bank of Decorah; and

3rd. That the deposit in question was accepted by and received in said bank by this defendant as such president of said bank, and as authorized by said laws of the United States and the said certificate of the Controller of Currency and not otherwise.

4th. That the laws of the United States under which said bank was so organized and permitted and licensed to do such banking business, authorized and permitted it by its officers and agents to accept and receive therein deposits of money in the usual and ordinary course of its business, and that the deposit in question was so accepted and received in and for said bank, by this defendant as its said president, and not otherwise; and

5th. That under such facts this court has no jurisdiction to inquire into, hear, try or determine the acts of this defendant in so accepting and receiving in and for said bank the said deposit, or to hear, try, or determine whether or not said bank was insolvent at the time said deposit was so received, and that such facts do not constitute any offence for which defendant can be tried or punished under the laws of this State.

6th. That the facts as charged in the indictment do not constitute any offence punishable by law.

7th. That the laws of Iowa under which said indictment is found, do not apply to national banks, organized under the laws of the United States, and doing business under the authority of, and as permitted by the laws of the United States.

106 8th. That the General Assembly of Iowa has no power or authority to enact any law that will in any manner effect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

Which motion and each ground thereof was overruled by the court, and the defendant at the time duly excepted.

Instructions Asked by Defendant.

The defendant thereupon asked the court to instruct the jury as follows:

* * * * * * *

5th. If you find from the evidence that said First National Bank of Decorah, Iowa, was on August 21st, 1896, conducting its business in the usual and ordinary way, and was then able to meet, and did in fact meet and pay all its obligations presented for payment in the

usual and ordinary course of business, and was in such condition and so continued to meet and pay all its obligation-, as they were presented for payment up to the time it was taken possession of by the Comptroller of the Currency, then you will find that said bank was not insolvent on said August 21st, 1896, and your verdict must be for defendant.

107 8th. If the books, bills receivable and assets and liabilities of the bank were examined by the bank examiner and fully showed the condition of the bank, and reports of the assets and liabilities were made by the bank to the comptroller, and the bank was permitted by the comptroller to continue business and did so continue and was doing business in the ordinary and usual way at the time this deposit was received, then you can take that fact into consideration in determining whether the defendant honestly believed that the bank would be able to continue business and remain solvent.

* * * * * * *

15th. If you find from the evidence that the First National Bank of Decorah, Iowa, at and about August 21, 1896, was conducting its business in the usual and ordinary way and was able to meet, and did meet all its liabilities when due and presented to it in the usual and ordinary course of business and that afterwards by reason of indebtedness incurred by defendant for others, pressure for payment was made and litigation threatened, which resulted in the closing of the bank and a depreciation of the assets by forced liquidation, resulting in insolvency, it is your duty to find for the defendant.

* * * * * * *

108 Which instructions and each thereof were refused; and to such refusal the defendant at the time duly excepted, which refusal and exception is noted upon the margin of each of said instructions and signed by the judge.

Thereupon the court instructed the jury as follows:

Instructions Given.

GENTLEMEN OF THE JURY:

I.

The indictment in this case charges substantially that the defendant, James H. Easton, on or about the 21st of August, A. D. 1896, in the county of Winnesheik and State of Iowa, being then and there engaged in the banking business as an officer, to wit: president of the bank known and styled as "The First National Bank of Decorah," located and doing business as a bank of deposit and banking in the city of Decorah, in the county of Winnesheik and State of Iowa, did, as president of said bank as aforesaid, unlawfully, willfully, knowingly and feloniously permit, connive at, encourage, accept and receive for deposit in the said bank known as "The First National Bank of Decorah" as aforesaid a certain deposit in lawful paper money, a more particular description of which is to the grand jurors

unknown, of and in the sum of one hundred dollars of and from one John French, being then and there the property of the
109 said John French, and of the value of $100.00, the said bank being then and there insolvent, and the said James H. Easton, defendant aforesaid, then and there well knowing the said bank was insolvent, contrary to and in violation of the statute of the State of Iowa in such case made and provided.

II.

To this indictment the defendant pleads that he is not guilty of the offense charged in the indictment, and he is presumed to be innocent until he is proven guilty beyond a reasonable doubt, and the burden of proof rests upon the State to establish the guilt of the defendant beyond a reasonable doubt.

III.

Our statute upon which the indictment in this case is based provides: "That no bank, banking-house, exchange broker, deposit office, or firm, company, corporation, or party engaged in banking, broker, exchange, or deposit business, shall accept or receive on deposit with or without interest any moneys, bank bills, or notes, or United States Treasury notes, or currency, or other notes, bills or drafts circulating as money or currency, when such bank, banking-house, exchange broker or deposit office, firm or party, is insolvent." And that, "if any such bank, banking-house, exchange broker, or deposit office, firm, company, corporation, or party, shall receive or accept on deposit any such deposits as aforesaid, when insolvent, any officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, any such deposit as aforesaid, shall be guilty of a felony."

IV.

In order to convict the defendant of the crime charged in the indictment, it is necessary for the State to establish beyond all reasonable doubt each of the following facts:

1st. That on August 21st, 1896, there was located in the city of Decorah, county of Winnesheik, State of Iowa, a bank incor-
110 porated under the laws of the United States and doing a banking business as "The First National Bank of Decorah."

2d. That the defendant, James H. Easton, on said date was engaged in the banking business as an officer of said bank, namely:—as president thereof.

3d. That the said "The First National Bank of Decorah" was then and there insolvent.

4th. That the defendant James H. Easton then and there being an officer of said "The First National Bank of Decorah," namely: president thereof, and while so engaged in the banking business at the time and place aforesaid, knowing of such insolvency as aforesaid, did knowingly and unlawfully receive on deposit in "The

First National Bank of Decorah" from one John French, $100.00 in money, the property of said French.

V.

If you find from the evidence before you beyond a reasonable doubt that on August 21st, 1896, the defendant was engaged in the banking business at Decorah, Winnesheik county, Iowa, as an officer namely: as president of "The First National Bank of Decorah," and that said bank was incorporated and authorized to do business under the laws of the United States, and if you further find from said evidence beyond a reasonable doubt that said bank was then and there insolvent, and if you further find from said evidence beyond a reasonable doubt that the defendant was then and there an officer of said bank, namely: president thereof, and while so engaged in the banking business at the time and place aforesaid, knowing of said insolvency of said bank, did knowingly and unlawfully receive on deposit in said bank from one John French the sum of $100.00 in money, the property of said French, then you will convict the defendant, and if you do not so find you will acquit him.

VI.

It is necessary for the State to establish by the evidence beyond all reasonable doubt, that at the time the alleged deposit was
111 received by "The First National Bank of Decorah," that the said bank was insolvent; that such insolvency was then and there known to the defendant, and that he then and there being an officer of said bank, namely: the president thereof, knowingly and personally received the deposit of John French in question in the said bank with knowledge of such insolvency.

VII.

The statute on which the indictment in this case is based was enacted to protect depositors in banks and banking institutions, and to punish fraudulent banking.

The word "insolvent," in the ordinary sense, as applied to an individual, means inability to pay all just claims or debts.

So, also, a party who is unable to pay his debts according to the usages of the trade, or proceed in business without a general arrangement with his creditors, or by indulgence by way of extension of time of payment, is insolvent under our insolvent laws.

The word insolvent, as used in this statute and in the indictment herein, and applied to a bank, company, or a corporation engaged in the business of banking, means inability to meet liabilities in the usual course of business, and if the assets of a banking corporation are insufficient in value to pay the debts of such corporations, then such corporation is insolvent.

A bank or banking corporation engaged in the banking business is solvent, within the meaning of the statute, when it possesses assets of sufficient value to pay, within a reasonable time, all its

liabilities through its own agencies, and is insolvent when it does not possess assets of such value.

One of the questions for you to determine from the evidence is, whether the First National Bank of Decorah was insolvent on August 21, 1896. The funds of a bank are supposed to be ready at hand to meet the wants of its patrons, and of the commercial, trading and manufacturing communities in which they are located.

So, in determining this question you will consider all the
112 evidence before you relating thereto, the amount and character of the assets of the First National Bank of Decorah, Iowa, and the reasonable cash value thereof, the uncertainty, if any has been shown, of being able to realize on such assets in a reasonable time, a sufficient amount to meet the liabilities of said bank, the availability or want of availability of such assets, as carrying of debts upon which little or nothing can be realized except after long delays, investments in real estate which may take time to turn into current funds, any and all such circumstances, if any, appearing in evidence, will be considered by you, and if you find beyond a reasonable doubt that the assets of the First National Bank of Decorah at the time and place mentioned in the indictment, computing such assets at their reasonable cash value, without regard to cost, were insufficient in value to pay all the debts of said bank within a reasonable time, in the ordinary course of business, then you will find that the said bank was then and there insolvent.

VIII.

The capital and surplus of the bank are a part of its resources and should be considered by you as a part of its assets and not as a liability of the bank.

IX.

The defendant is charged with and is now on trial for accepting and receiving a deposit of $100.00 from one John French on August 21, 1896, as hereinbefore stated and for no other offense. The fact that other deposits in said bank were made by other persons can be considered by you only in determining the amount of the bank's liabilities or obligations at such time, and that the bank was doing business at and prior to receiving such deposit from John French and for no other purpose.

X.

The fact that the First National Bank of Decorah, Iowa, was closed by the Comptroller of the Currency of the United States on November 10, 1896, does not prove or tend to prove that said bank was insolvent on August 21, 1896, when the deposit in ques-
113 tion was received; and you will not consider such fact in determining whether or not said bank was solvent on August 21, 1896.

XI.

The amount collected by the receiver on the assets of the bank, in his efforts to liquidate and close it- affairs, is not the basis upon

which you will reach your conclusion as to the value of such assets on August 21, 1896. You will determine the fair and reasonable value of the assets and resources of the bank on August 21, 1896, from all the evidence in the case bearing upon that question.

XII.

If you believe from the evidence before you that property constituting assets, or security for assets of the bank located at a great distance, or in other States, had depreciated in value below that at which it was carried on the books of the bank, such facts alone are not sufficient to charge the defendant with a knowledge of the depreciated value of the property, but you will carefully consider all the evidence before you bearing upon such property, and defendant's means of knowledge of its value in determining whether he did, or did not know of such depreciation.

XIII.

Should you find from the evidence that the legal reserve of the First National Bank of Decorah, Iowa, was on August 21, 1896, less than fifteen per cent. of its deposits, that fact should not be considered by you in determining the solvency of said bank.

XIV.

Certain witnesses have been permitted to testify that in their opinion claims against certain of the debtors of the bank could not be collected by execution or otherwise from such debtors in Winnesheik county, Iowa, on August 21, 1896. You are instructed that such testimony does not prove nor tend to prove that claims could not have been collected from such debtors at place- where such debtors resided or did business or had property other than in said Winnesheik county. Nor is the opinion of such witness or witness- conclusive that such claims could not be collected from such
114 debtors; but you should carefully scrutinize and consider the facts stated by each of said witnesses, his opportunity for knowing the actual financial condition of each of said debtors about whom he testifies, upon which he bases such opinion, and give to the opinions only such weight as you believe them just and fairly entitled.

XV.

If you shall find from the evidence that any person owing the bank had no property subject to execution at a particular place or county not shown to be the place of their business or residence such fact raises no presumption of the insolvency of such person, nor that they did not have property subject to execution elsewhere.

XVI.

You are instructed that the claims of the First National Bank of Decorah, Iowa against the estates and heirs of S. W. Matteson and W. E. Akers respectively, were not completely barred on August 21,

1896, and you will not therefore consider such claims as worthless simply because they had not been filed as claims against such estates respectively in the probate court in Minnesota on such date, but will determine the value thereof from a consideration of all the evidence introduced upon the trial relating thereto.

XVII.

You are instructed not to consider for any purpose whatever the evidence of the witness, W. V. Baker, as to the market value of the two notes of F. S. Eames, but to consider the case the same as though said evidence had not been admitted upon that point.

XVIII.

The fact that the defendant has not testified in his own behalf in this case, must not be given any weight against him by you in your deliberations; and you must not consider the fact of his not so testifying as a circumstance against him or for any other purpose whatever in arriving at your verdict.

XIX.

In criminal causes, full and satisfactory proof is required; mere weight of evidence is not sufficient, unless it excludes all rea-
115 sonable doubt as to the guilt of the defendant. The proof of guilt must be inconsistent with any other rational supposition; it must be real and not captious; it must not be a forced or artificial doubt; it must, without being sought after, fairly and naturally arise in the mind, after comparing the whole evidence and deliberately considering the whole case. If, upon such consideration, your minds and consciences are not firmly and abidingly satisfied of the defendant's guilt, i-s moral certainty is not produced, if the judgment waivers and occillates, you should give the accused the benefit of the doubt thus arising and acquit him.

XX.

Your province, gentlemen, is to determine the facts in the case from the evidence before you, and reach a conclusion from such evidence under the instructions of the court as to the law applicable to the case.

XXI.

When you retire to consider your verdict, select one of your number as foreman, and when you have agreed upon your verdict write it out on a sheet of paper separate from the instructions, have it signed by your foreman and return into court with your verdict.

The form of your verdict will be: "We, the jury, find the defendant guilty." Or, "We, the jury, find the defendant not guilty."

A. N. HOBSON, *Judge.*

To each of which instructions the defendant at the time they were given duly excepted; which exception is duly noted upon the margin of each of said instructions and signed by the judge.

After the giving of such instructions the jury retired, and on t
6th day of April, A. D. 1899 that being the 28th day of the regul
March, 1899, term of said court, the jury returned into court
verdict of guilty, as follows, "We the jury find the defenda
guilty."

116 On the same day the defendant filed a motion in arrest
judgment, as follows:—

Comes now the defendant and moves the court that no judgme
be rendered against him on the verdict returned in said cause, a
for grounds therefor shows:—

* * * * * * *

2nd. That the indictment contains matter, which if true, cons
tutes a legal defense and bar to the prosecution.

* * * * * * *

5th. That the undisputed testimony affirmatively shows that t
said First National Bank of Decorah, Iowa, was on August 21
1896, a banking association, duly organized under and in pursuan
of the laws of the United States, and that a certificate had been du
issued to said bank by the Comptroller of the Currency of the Unit
States, in pursuance of the laws thereof, duly authorizing it to do
general banking business, including the accepting and receipt
deposits, at Decorah, in Winnesheik county, Iowa, as authorized b
such laws of the United States, that said bank was on said Augu
21st, 1896, then doing such banking business at said place und
and in pursuance of and by virtue of such laws, and said certifica
of the Comptroller of the Currency of the United States and n
otherwise.

6th. That said defendant was on said August 21st, 1896, the du
appointed and qualified president of said First National Bank
Decorah, Iowa; and

117 7th. That the deposit in question was accepted for and r
ceived in said bank by this defendant as such president
said bank, and as authorized by said laws of the United States an
the said certificate of the Comptroller of the Currency and not othe
wise.

8th. That the laws of the United States under which said ban
was so organized and permitted and licensed to do such bankin
business, authorized and permitted it by its officers and agents t
accept and receive therein deposits of money in the usual and ord
nary course of its business, and that the deposit in question was
accepted and received in and for said bank by this defendant as i
said president and not otherwise; and

9th. That under such facts this court has no jurisdiction to in
quire into, hear, try, or determine the act of this defendant in
accepting and receiving in and for said bank the said deposit;
to hear, try, or determine whether or not said bank was insolven
at the time said deposit was so received, and that such facts do no
constitute any offence for which defendant can be tried or punishe
under the laws of this State.

10th. That the facts as charged in the indictment do not constitute an offence punishable by law.

11th. That the law of Iowa under which said indictment is found does not apply to national banks, organized under the laws of the United States, and doing business under the authority of and as permitted by such laws of the United States.

12th. That the General Assembly of Iowa has no power or authority to enact any laws that will in any manner effect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

13th. That upon the whole record no legal judgment can be pronounced against defendant.

118&119 Which motion and each ground thereof *was* on the same day overruled by the court, to which ruling the defendants at the time duly excepted.

The defendant thereupon filed a motion for a new trial, as follows:

The defendant moved the court to set aside the verdict *set* against him and grant a new trial for the reasons:—

1st. That said verdict is contrary to law, and the evidence adduced upon the trial.

2nd. The court erred in giving its instructions to the jury numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, and in the giving of each one of said instructions.

3rd. The court erred in refusing each of the instructions asked by defendant, viz:—those numbered 2, 3, 5, 8, 14, 15, 17, 18 and 19.

* * * * * * *

120 18th. The court erred in overruling defendant's motion to quash the indictment and in overruling each ground thereof.

19th. The court erred in overruling defendant's demurrer to the indictment and in overruling each ground thereof.

121 20th. The court erred in overruling defendant's motion to discharge the jury and direct the verdict for defendant and to release the defendant from custody made at the close of the evidence, and in overruling each ground of said motion.

* * * * * * *

122 Which motion and each ground thereof was overruled by the court; to which rulings and each thereof the defendant at the time duly excepted.

The court on said April 6, 1899, rendered judgment against the defendant as follows:

It appearing to the court that more than six hours have elapsed since the rendition of the verdict, judgment is entered upon
123 the verdict; it is ordered and adjudged by the court that the defendant is guilty of the offense charged in the indictment and that the defendant, James H. Easton, be imprisoned in the penetentiary of Iowa, at Anamosa, at hard labor, for the term of five

years, and that he pay the costs of prosecution; bail on appeal is fixed at $10,000.

To which judgment and each and every part thereof the defendant excepts. By consent of parties defendant is given until September 1, 1899, to settle and file bill of exceptions.

On April 6, 1899, the defendant served on the attorneys of record for the State at the time said judgment was rendered, and on the clerk of the district court of Fayette county, a notice of appeal from said judgment to the supreme court of Iowa.

The defendant also filed with said clerk, on said April 6, a bail bond on appeal in the sum of $10,000, conditioned as by law provided, with sureties; which bond and sureties were duly approved by said clerk.

The shorthand reporter's notes of the evidence and proceedings of the trial were filed with the clerk of said court on April 6, 1899, duly certified by the reporter and the judge of said court on said date, and made a part of the record of said cause; and on August 28, 1899, a bill of exceptions in which are incorporated the evidence and other proceedings had upon the trial, was signed by the judge and filed with the clerk, together with a transcript of the reporter's said shorthand notes of the evidence and proceedings of the trial, and all are duly made a part of the record of said cause.

I hereby certify that the foregoing is a correct and true abstract of the whole record of said cause.

H. T. REED,
Of Counsel for Appellant.

124 And now the appellant makes the following assignment of errors, viz., the court erred

* * * * * * *

Second. In overruling each of the following grounds of the second division of the motion to set aside the indictment, viz:

The 2nd. That the law of Iowa under which said indictment was found, in so far as it attempts to make the receipt and acceptance of deposits in and for national banks, their officers and agents, a crime, is contrary to and in violation of the Constitution and laws of the United States, and void.

The 3rd. That the court has no jurisdiction to inquire into, hear, try or determine the act of defendant alleged in the indictment, for that said act was done by defendant under and in pursuance of the laws of the United States; and that said indictment and all process thereunder are void.

The 4th. That said law of Iowa is not uniform in its operation; and it unlawfully discriminates against banks, their officers, and agents.

Third. In overruling each of the following grounds of the demurrer to the indictment, viz:

* * * * * * *

The 2nd. That it contains matters which if true would constitute a legal defense or bar to the prosecution.

* * * * * * *

125 The 5th. That it does not state facts constituting an offense.

* * * * * * *

The 7th. That defendant as president of the First National Bank of Decorah accepted and received a deposit in and for said bank.

The 8th. That the alleged acts of the defendant constituted no crime because the statute of Iowa prohibiting the receipt of deposits by banks or their officers when insolvent does not apply to national banks, but only to banks doing business under the authority of the laws of this State.

The 9th. That the court has no jurisdiction to inquire into, hear, try or determine the act of defendant in accepting said deposit in and for the First National Bank of Decorah, for that said act of defendant is expressly authorized and permitted by the laws of the United States under which said bank is organized and is doing business.

The 10th. That if said law or Iowa be construed or held to apply to national banks and their officers and agents, it is in violation of the Constitution and laws of the United States in

(*a.*) That it abridges the rights and privileges of said banks, their officers and agents, as given them by the laws of the United States;

(*b.*) That it unlawfully discriminates against said banks, their officers and agents;

(*c.*) That it is an attempt to regulate and control the
126–128 business of national banks, which is a matter within the exclusive control of the Congress of the United States and upon which it has legislated;

(*d.*) That it attempts to prohibit, and punish by fine and imprisonment, the accepting and receiving of deposits in and for national banks by their officers and agents, which said acts are expressly authorized and permitted by the laws of the United States.

The 11th. That said law of Iowa is void in that it is not uniform in its operation, and unlawfully discriminates against banks, their officers and agents.

* * * * * * *

129 Thirty-second. In overruling each of the following grounds of defendant's motion to direct a verdict of acquittal, and discharge him from custody, viz: the 1st, the 2nd, the 3d, the 4th, the 5th, the 6th, the 7th, and the 8th. Appellant's Abstract, page 104.

Thirty-third. In refusing each of the following instructions asked by defendant, viz: the 2nd, the 3d, the 5th, the 8th, and the 14th. Appellant's Abstract, page 106.

Thirty-fourth. In giving each of the following paragraphs of the instructions given to the jury, viz: the 3d, the
130–223 4th, the 5th, and the 7th. Appellant's Abstract, page 108.

Thirty-fifth. In overruling each of the following grounds of the defendant's motion in arrest of judgment, viz: the 1st, the 2nd, the 3d, the 4th, the 5th, the 6th, the 7th, the 8th, the 9th, the 10th, the 11th, the 12th, and the 13th. Appellant's Abstract, page 116.

* * * * * * *

Thirty-seventh. In rendering judgment against the defendant. Appellant's Abstract, page 122.

* * * * * * *

224 And said cause was duly submitted to said supreme court at the January term, 1901 thereof on the foregoing record, and the said cause having been fully considered, said court did on the 12th day of April, 1901, file its written opinion (decision) the same being in the words and figures following, to wit:

In the Supreme Court of Iowa.

Filed April 12, 1901.

THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant.

From Fayette district court—Hon. A. N. Hobson, judge.

The defendant was charged by indictment with having, on the 21st day of August, 1896, while engaged in the banking business as president of the First National Bank of Decorah, at Decorah, Iowa, "unlawfully, wilfully, knowingly and feloniously permitted, connived at, encouraged, accepted and received, on and for deposit in said bank—a certain deposit in lawful paper money—of and in the sum of one hundred dollars, from one John French—and of the value of $100, the said bank being then and there insolvent, and the said James H. Easton the defendant aforesaid then and there well knowing that said bank was insolvent."

225 The defendant's motion to set aside the indictment and his demurrer to the indictment being overruled he plead not guilty and upon trial had a verdict of guilty was returned and judgment of imprisonment for five years and for costs rendered on the verdict. From this judgment the defendant appeals.

J. B. Powers, Dan Shea, Clements & Clements, and H. T. & C. W. Reed, for appellant.

Milton Remley, attorney general, H. P. Hancock, county attorney, E. P. Johnson and James H. Trewin, for appellee.

GIVEN, *C. J.:*

I. On and for a long time prior to August 26, 1896, the defendant was the president and general manager of the First National Bank of Decorah, a bank duly authorized to transact business at Decorah as a national bank under the laws of Congress.

On said 26th day of August, 1896, the defendant received from

John French on deposit in said bank $100 in money, for which he executed to Mr. French a certificate of deposit payable six months after date with interest at 4 per cent. "No interest after maturity."

The bank was then open and transacting business in the usual manner and continued to do so until about Nov. 10, 1896, when it was found to be insolvent and was put into the hands of a receiver.

While the question of the insolvency of the bank and of defendant's knowledge on that subject at the time this deposit was received are in issue, the jury was fully warranted in finding that the
226 bank was then insolvent and that the defendant knew that fact when he received the deposit. The extent of the liabilities of the bank, the character of its assets including a large liability against the defendant and defendant's active control and management of the bank, leave no room for debate on these issues.

II. Appellant's counsel present two propositions as follows.

"First. Does the statute of Iowa prohibiting banks or their officers or agents, from accepting and receiving deposits when such banks are insolvent, appiy to national banks organized and doing business under and in pursuance of the laws of the United States.

Second. If sections 1884 and 1885 of the Code be held to apply to national as well as State and private banks or bankers, then are they valid in so far as they apply to national banks organized and conducting business under the laws of Congress."

Section 1884, chapter 12, title 9 of the Code provides that "no bank, banking-house, exchange broker, deposit office, firm, company, or corporation doing a banking—or deposit business shall, when insolvent, accept or receive on deposit—any money bank bills, United States Treasury notes, or currency" &c.

Section 1885 provides as follows.

"If any such bank, banking-house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent any owner, officer, director, cashier, manager; member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit
227 therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony," &c.

Chapter 10 of said title 9 provides for the organization of savings banks, chapter 11 for the organization of State banks, and chapter 12, in addition to said sections 1884 and 1885, provides how such banks shall be managed and controlled.

Appellant insists that said sections 1884 and 1885 only apply to the banks provided for in said title 9.

The language of said sections included many other than savings and State banks and the construction contended for would exempt all these others from the prohibitions and penalties of said sections, which would leave the public unprotected as against such frauds by brokers, private bankers and others than savings and State banks that conduct a deposit business. These sections were originally enacted as chapter 153 Laws of the 18 G. A. and re-enacted in the code with slight changes as a part of said chapter 12. They

might more properly have been placed in the criminal statutes, but the fact of their re-enactment as part of chapter 12 does not warrant the restriction claimed. We are in no doubt but that the legislative intent is that said sections shall apply to all persons, corporations and associations receiving deposits of money. See State *vs.* Fields, 98 Iowa 748.

III. Appellant contends, in support of his second proposition, that said sections 1884 and 1885 of the Code of Iowa are invalid as to national banks, in other words, that they do not apply to national banks. The argument is that under the laws of Congress such banks are authorized to receive deposits and that, "where an act is authorized to be done by a law of the United States,
228 such act is thereby withdrawn from the operation of the criminal laws of the State, unless otherwise expressly provided by Congress, and that the performance of such act in pursuance of and as authorized by such law of the United States cannot be punished as an offense against any law of the State."

This statement of the law is in substantial accord with the authorities and the inquiry is whether the defendant was authorized by the laws of Congress to do the act of which he has been convicted.

This inquiry, we think, is directly answered in State *vs.* Fields, *supra*. We understand appellant's counsel to concede that that case is against their contention but they insist that it is against the weight of authorities, especially certain cases decided since that opinion was rendered; namely, State *vs.* Thomas, 173 U. S. 276 and *In re* Wait, 81 Fed. Rep., 359.

We do not find that this precise question has ever been passed upon by the Supreme Court of the United States, the only tribunal that may render a final determination of it. In the absence of such a decision, we follow the law as announced in State *vs.* Field, without reviewing the authorities and reasons upon which it is based.

IV. One ground of defendant's motion to set aside the indictment was that Thomas Rice was examined before the grand jury without being sworn as required by law.

Mr. Rice was foreman of the grand jury, he was sworn by one of the jurors and testified only that the defendant had been president of the bank for many years. There has been no dispute as to this fact at any time and we fail to see wherein the defendant was prejudiced by reason of Mr. Rice's not being sworn as provided in sections 5254, 5255 and 5260 of the Code.

229 This is not a ground for setting aside an indictment. Code sec. 5319. The grounds prescribed in that section are exclusive of others. State *vs.* Boughman, Iowa 82 N. W. Rep. 453. Another ground of said motion is that certain exhibits before the grand jury as evidence were not returned with the indictment as required by section 5280 of the Code.

The exhibits referred to are said certificate of deposit and a receipt given by defendant to one Grow. French and Grow testified concerning these documents but it does not appear that either document was before the grand jury. There was no error in overruling the motion on either of these grounds.

V. A ground of demurrer to the indictment was, that it is indefinite and uncertain and does not charge any offense with the required certainty.

It is argued that the indictment fails to show whether the bank was a corporation, partnership or name under which an individual was doing business.

The indictment charges that defendant was president of the bank known as the First National Bank of Decorah. "Construed in their usual acceptation in common language" these words of the indictment show that this was an incorporated national bank. Code sec. 5287.

As we construe said sections 1884 and 1885 the defendant's guilt does not depend upon the character of the organization of the bank. Another ground of the demurrer was that the indictment charges two offenses, namely, the permitting, conniving at and encouraging the receipt and acceptance of the deposit and also receiving the same.

To receive or accept a deposit knowing the bank to be in-
230 solvent is an offense, and to be accessory or permit or connive at receiving, or accepting, a deposit by another, knowing the bank to be insolvent is also an offense.

The indictment charges a receiving by the defendant and what is said as to his permitting, conniving at and encouraging the deposit is not that it be given to another but to himself.

The indictment does not charge two offenses for that it does not charge that defendant permitted, connived at or encouraged the giving of the deposit to another. There was no error in overruling the demurrer on these grounds.

VI. The court admitted in evidence, over defendant's objection, books of the bank, as bearing upon the question of insolvency and the defendant's knowledge thereof.

Defendant insists that these were not books of account or of original entries and therefore not admissible. They were not admitted as books of account and were not offered as such. They were books kept under the supervision of the defendant to show the condition of the bank and the entries therein were accessible to and known by him, therefore, they were admissible not only to show the condition of the bank but also the defendant's knowledge as to its condition.

The authority cited as to the rule applicable to books of account are not in point.

It is also contended that the court erred in admitting the evidence of the receiver and others as to the value of certain notes held by the bank. The condition of the bank depends upon the val-e of its assets and there was no better way of proving the value of these notes.

We find no error in the admission of evidence.

231 VII. Appellant's remaining contention is that the court erred in refusing certain of the instructions asked and in giving the sixteenth paragraph of the charge.

In so far as those asked were correct they were fully covered by

those given. Said 16th instruction relates to a claim held by the bank and was really favorable to the defendant.

We do not find any error in the giving or refusing instructions.

It follows from the conclusions we have reached that the judgment of the district court must be affirmed.

232 And on the same day said supreme court rendered a final judgment in said cause, the same being duly entered of record and is as follows:

"THE STATE OF IOWA
vs.
JAMES H. EASTON, Appellant. } Appeal from Fayette District Court.

In this cause, the court being fully advised in the premises file their written opinion affirming the judgment of the district court.

It is therefore considered by the court that the judgment of the court below, be, and it is hereby affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellant pay the costs of this appeal, taxed at $148.65, and that execution issue therefor."

232½ And afterwards there was filed in the office of the clerk of said court a petition for writ of error, writ, bond, citation and assignment of errors, and the same are hereto attached in original form as a part of the return to said writ of error, and true and correct copies thereof have been made and the same are lodged in said clerk's office.

233 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE IOWA, Defendant in Error. } Petition for Writ of Error to the Supreme Court of Iowa.

To the honorable the chief justice of the supreme court of Iowa:

The petition of James Henry Easton respectfully shows,

That on the 12th day of April A. D. 1901, the supreme court of the State of Iowa rendered final judgment against him in a suit pending in said court wherein The State of Iowa was plaintiff and the petitioner was defendant and appellant, affirming a judgment of the district court of said State in and for Fayette county, Iowa, in said suit while the same was pending in said district court, adjudging your petitioner guilty of the alleged crime of knowingly accepting and receiving, as president of a national bank duly organized under the laws of the United States, and located and doing business as such national bank under such laws in the city of Decorah, Winnesheik county, Iowa, a deposit of one hundred dollars in money in and for said national bank when the same was insolvent, and sen-

tencing your petitioner to imprisonment in the penitentiary of Iowa at Anamosa for the term or period of five years, at hard labor, and also adjudging that your petitioner pay the costs of said action, taxed at — dollars; all of which will more fully appear by reference to the record and proceedings in said cause in said supreme court of Iowa.

That said supreme court of Iowa is the highest court in said State in which a final judgment in said suit can be had, and the petitioner claims the right to remove said judgment of the supreme court of Iowa, and the records and proceedings in said suit, to the Supreme Court of the United States by writ of error, under
234 the provisions of the statute of the United States in that behalf provided, and more especially section 709 of the Revised Statutes thereof, because

First. There was drawn in question in said suit, both in the district court and in the supreme court of said State of Iowa, the validity of a law of the United States, to wit, the national bank act, and of an authority exercised by the petitioner under the United States, to wit., as authorized by said national bank act; and the decision of said supreme court of Iowa is against the validity of such law of the United States and the authority exercised by the petitioner under the United States, and in pursuance of said law of the United States.

Second. There was drawn in question in said suit, both in the district court and in the supreme court of said State of Iowa, the validity of a statute of the State of Iowa, to wit, sections 1884 and 1885 of the Code of Iowa, 1897, as applied to a national bank duly organized under the law of the United States, upon the ground that said statute of the State of Iowa is repugnant to the Constitution of the United States; and to a law of the United States, to wit, the national bank act; and the decision of said supreme court of Iowa is in favor of the validity of such statute of the State of Iowa.

Third. That in said suit, both in the district court and in the supreme court of said State of Iowa, the petitioner specially set up and claimed the right, privilege, and authority under a law of the United States, to wit, the national bank act, as an officer, to wit, the president of a national bank duly organized under such national bank act, to accept and receive in and for said bank, in the ordinary course of its business, deposits of money, one of which deposits, to wit, of one hundred dollars, so accepted and received by him, he is charged in such suit as having unlawfully accepted and received, because of the provisions of said section- 1884 and 1885 of the Code of Iowa, 1897; and the petitioner claimed immunity under the Constitution of the United States, and a law of the United States, to wit, said national bank act, from said law of Iowa for accepting and receiving said deposit of money as such president
235 and officer of such national bank; and the decision of said supreme court of Iowa is against the right, privilege, and immunity so set up and claimed by the petitioner.

All of which more fully appears by the record and proceedings in said suit, which are herewith submitted; and in which judgment,

record, and proceedings manifest error hath happened and doth appear, to the great damage and injury of the petitioner.

The petitioner, conceiving himself aggrieved by the judgment and decision of the supreme court of Iowa in said suit, files herewith an assignment of errors as claimed by him in such decision, and prays the allowance of a writ of error, returnable into the Supreme Court of the United States, to the end that such errors may be corrected, the judgment of said supreme court of Iowa reversed, and proper relief granted unto your petitioner; that proper orders be made as to all necessary process therefor; that the amount of bail or bond required of your petitioner, to operate as a supersedeas and stay of proceedings in said cause and as security for the costs and damages in the prosecution of said writ of error, be fixed as by law provided.

JAMES H. EASTON, *Petitioner*,
By H. T. & C. W. REED, *Attorneys*.

H. T. REED, *Of Counsel*.

Allowed, and bond to operate as supersedeas and stay of proceedings fixed at five hundred dollars, in addition to appearance bond already given in district court.

Dated at Des Moines, Iowa, this 16th day of April, A. D. 1901.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

236 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the supreme court of the ~~United States for the~~ State ~~district~~ of Iowa, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, at the January term, 1901, thereof, between the State of Iowa and James H. Easton wherein was drawn in question the validity of a statute of or authority exercised under the United States and the decision was against their validity, and wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of such their validity and wherein was drawn in question the construction of the clause of the Constitution and statute of the United States and the decision was against the title, right, privilege and exemption specially set up or claimed under such clause of the said Constitution and statute a manifest error has happened, to the great damage of the said James H. Easton as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid, at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court on or before the 16th day of May, 1901, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of April in the year of our Lord one thousand nine hundred and one.

Issued at office in the city of Des Moines with the seal of the circuit court of the United States for the southern district of Iowa; dated as aforesaid.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MANN,
Clerk Circuit Court United States, So. District of Iowa,
By —— ——, *Deputy.*

Allowed to operate as a supersedeas this 16th day of April, 1901.
JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

237 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

Know all men by these presents: That we, James H. Easton, as principal, and John W. Sandusky and Grant M. Bigelow & Tim. Donovan of Chickasaw county Iowa as sureties, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of April in the year of our Lord one thousand nine hundred and one.

Whereas, lately, at a session of the supreme court of the State of Iowa, in a suit pending in said court between The State of Iowa as plaintiff, and the said James H. Easton as defendant, a final judgment was rendered against the said James H. Easton, affirming a judgment of the district court of Iowa in and for Fayette county, sentencing the said defendant to imprisonment in the penitentiary of Iowa at hard labor for the term or period of five years, and adjudging that he pay the costs of said action; and the said James H. Easton having obtained the allowance of a writ of error, and filed a copy thereof in the clerk's office of said supreme court of Iowa, to reverse the judgment in the aforesaid suit, and a citation directed to said State of Iowa citing and admonishing it to be and appear at the

Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said James H. Easton shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES H. EASTON.
JOHN W. SANDUSKY.
GRANT M. BIGELOW.
TIM DONOVAN.

Sealed and delivered in the presence of—
CARL H. KENYON.
H. T. REED.

Bond Certificate.

STATE OF IOWA, } ss:
Chickasaw County, }

I, J. W. Redman clerk of the district court in and for Chickasaw county, Iowa, do hereby certify that J. W. Sandusky, Grant M. Bigelow and Tim Donovan whose names are affixed to the within bond of James H. Easton are freeholders in the State of Iowa, and if the said bond was presented to me I should cheerfully approve the same in the amount of fifteen thousand dollars or more.

Witness my hand and seal of the district court hereto attached, this 15th day of April 1901.

[Seal of the District Court of Chickasaw Co., Iowa.]

J. W. REDMAN,
Clerk District Court.

{ Ten cent United States internal-revenue stamp, canceled 4, 15, '01. J. W. R. }

238 & 239 STATE OF IOWA, } ss:
Chickasaw County, }

We, John W. Sandusky, Grant M. Bigelow & Tim. Donovan of Chickasaw county Iowa being each duly sworn, each for himself doth depose and say:

That he is a resident of the State of Iowa, is worth the sum of ten thousand dollars, and has property liable to execution in this State equal to the sum of ten thousand dollars.

JOHN W. SANDUSKY.
GRANT M. BIGELOW.
TIM DONOVAN.

Subscribed by John W. Sandusky, Grant M. Bigelow & Tim Donovan in my presence and by them severally sworn to before me this 15th day of April 1901.

[Seal of the District Court of Chickasaw Co., Iowa.]

J. W. REDMAN,
Clerk of District Court in and for Chickasaw County, Iowa.

The foregoing bond approved, the same to operate as a supersedeas, bail, and stay bond.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] In the supreme court of Iowa. The State of Iowa vs. James H. Easton. Bond. H. T. Reed, attorney, Cresco, Iowa.

240 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, at Des Moines, in said State, wherein James H. Easton is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Josiah Given, chief justice of the supreme court of the State of Iowa, this 16th day of April, in the year of our Lord one thousand nine hundred and one.

JOSIAH GIVEN,
Chief Justice of the Supreme Court of Iowa.

We hereby admit that the foregoing citation was legally served on us at Des Moines, Iowa this 16th day of April 1901.

LESLIE M. SHAW,
Governor of Iowa.
CHAS. W. MULLAN,
Attorney General of Iowa.

241 Filed Apr. 16, 1901. C. T. Jones, Clerk Supreme Court.

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE OF IOWA, Defendant in Error. } Assignment of Errors.

The petitioner, James H. Easton, as plaintiff in error, against The State of Iowa, as defendant in error, in the petition for a writ of error to the supreme court of Iowa filed herewith says, that there is manifest error in the judgment and decision of the said supreme court of Iowa in the suit referred to in said petition in this:

That said supreme court of Iowa erred,

First. In holding that the petitioner in accepting and receiving

the deposit of money in and for the First National Bank of Decora Iowa, and as charged in the indictment in said suit, was subject and amenable to sections 1884 and 1885 of the Code of Iowa, 189 and subject to prosecution and conviction under said State statut in the courts of Iowa for so doing.

Second. In holding that the said State courts of Iowa have juri diction to inquire into, hear, try, or determine the question of th validity of an authority of the petitioner, as president of a nation bank organized under the laws of the United States, to wit, th national bank act, and doing business as such in the State of Iow to accept and receive a deposit of money in and for such bank; to determine the question of the validity or legality of the act of th petitioner in so doing.

Third. In holding that said sections 1884 and 1885 of the Cod of Iowa, 1897, are not repugnant to the Constitution of the Unite States, and to a law thereof, to wit, the national bank act, in so far they attempt to prohibit national banks, their officers and agent from accepting and receiving deposits of money in and for suc banks, and incurring an indebtedness for such banks, in th
242 ordinary course of their business, unless the same is done i compliance with such sections of the law of Iowa; and i holding the said sections valid as against such national banks, thei officers and agents, while engaged in the transaction of the ordinar business of such banks.

Fourth. In holding that an act done by the petitioner under th authority of the Constitution of the United States, and of a la thereof, to wit, the national bank act, and as expressly authorized b such law, to wit, the acceptance and receipt by him as president a national bank in Iowa of a deposit of money in and for said banl is a crime against the laws of the State of Iowa, and the petitione subject to prosecution and conviction in the courts of Iowa for doin such act which is so expressly authorized by such law of the Unite States.

Fifth. In holding that it was within the rightful power of the Stat of Iowa, by an act of its General Assembly, to make the act of th president or other officer of a national bank organized under th laws of the United States and doing business as such in the Stat of Iowa in the transaction of the ordinary business of such bank, crime, and to impose a penalty of fine or imprisonment upon such officer for the transaction of such business for such bank, unless the same be done in compliance with the laws of said State of Iowa.

Sixth. In denying to the petitioner the right, privilege, authority and immunity specially set up and claimed by him in said suit fo an act done and authority exercised by him under the United States, and the laws thereof, viz., the national bank act.

Seventh. In affirming the judgment of the district court of Iowa in and for Fayette county, adjudging the petitioner guilty of a viola tion of sections 1884 and 1885 of the Code of Iowa, 1897, and sentencing him to imprisonment in the penitentiary of Iowa therefor; because said sections cannot rightfully have any force or effect as against an act done by the petitioner under a law of the United

States, to wit, the national bank act, and as expressly authorized by such law.

Eighth. In holding that said sections 1884 and 1885 of the
243 Code of Iowa, 1897, are not repugnant to the Constitution of the United States; because they unjustly discriminate against national banks, their officers and agents, in transacting such business in Iowa, and make the incurring of a debt by such bank, in the ordinary course of its business and without any fraudulent intent, a crime or offense, and which would not be a crime or offense if incurred by other persons or corporations.

Wherefore, the petitioner James H. Easton prays that said judgments of the supreme court of Iowa and of the district court of Iowa in and for Fayette county be each reversed, annulled, and set aside, and that he be discharged and released from the effect thereof.

H. T. & C. W. REED,
Attorneys for Petitioner.

H. T. REED, *Of Counsel.*

244 STATE OF IOWA, *ss:*

I, C. T. Jones, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true and correct transcript of the record and proceedings in the case of The State of Iowa against James H. Easton, lately tried and determined in said supreme court.

And I further certify that the petition for a writ of error the writ, bond, citation and assignment of errors are hereto attached in original form, true and correct copies thereof having been made and retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and official seal at Des Moines, Iowa, this 27th day of April, 1901.

[Seal of the Supreme Court of Iowa.]

C. T. JONES,
Clerk Supreme Court of Iowa.

245 *Statement of the Errors to be Relied upon by the Plaintiff in Error, and of the Parts of the Record in Support Thereof.*

In the Supreme Court of the United States, October Term, 1901.

JAMES H. EASTON, Plaintiff in Error,
vs.
THE STATE OF IOWA, Defendant in Error. } No. 658.

The plaintiff in error in the above-entitled cause states,

That he intends to rely upon assignments of errors Nos. 1 to 8 inclusive, together with the prayer for reversal, as filed by him in said cause.

That the following-named parts of the record are all that he deems necessary for the consideration thereof, and all that need be printed, viz.,

(The references to pages are to appellant's abstract of record in the supreme court of Iowa.)

1st. The caption, as prepared and filed by the clerk of the supreme court of Iowa.

2nd. The title page, or page 1, of appellant's abstract of record in the supreme court of Iowa.

3rd. The indictment, endorsement and presentation thereof, as appears upon the said

Title page, and lines 1 to 23 inclusive of page 2.

4th. The arraignment, as appears upon

Page 5, lines 4 to 7 inclusive.

5th. The second ground of the motion to set aside the indictment, the ruling thereon, and exception to such ruling, as appears upon

Page 5, lines 8 to 13 inclusive.

Page 6, all after line 2.

Page 7, lines 1 to 11 inclusive.

6th. The demurrer to the indictment, viz., the 2nd, 7th, 8th, 9th, 10th and 11th grounds thereof, the ruling thereon, and exception to such ruling, as appears upon

246 Page 7, lines 12, 13, 14, 17, and 18.

Page 8, all after line 2.

Page 9, all except the last two lines.

7th. Defendant's plea of not guilty, empanelling the jury, and plaintiff's testimony, as appears upon

Page 9, last two lines.

Page 10, lines 1 to 11 inclusive.

8th. Part of plaintiff's testimony beginning on page 10, viz., —.

9th. John French, as to deposit of money and certificate therefor, as appears upon

Page 10, lines 12 to 27 inclusive.

Page 11, lines 3 to 19 inclusive.

10th. Wm. H. Dent, and papers showing organization of the First National Bank of Decorah, Iowa, as appears upon

Page 12, all after line 3.

Page 13, all except the last line.

11th. Otto Arneson, identifying books of the bank, as appears upon

Page 13, last line.

Page 14, lines 1 to 8 inclusive, and lines 19, 20, 21, 33, and 34.

Page 15, lines 1, 2, 3, and 11.

12th. Witnesses testifying to deposits made in the First National Bank of Decorah, Iowa, as appears upon

Page 15, all after line 17.

Page 16, lines 1 to 25 inclusive.

13th. Otto Arneson recalled, as appears upon

Page 16, all after the parenthesis in line 26.

Page 17, lines 1 to 23 inclusive.

14th. E. R. Baker, identifying articles of association, and books of the First National Bank of Decorah, Iowa, showing its transactions, resources and liabilities, as appears upon

Page 17, all after line 23.

Pages 18 to 23 inclusive.
Page 24, all except last two words.
Page 26, lines 16 to 22 inclusive.
Page 28, lines 7 to 12 inclusive, and all after line 28.
Page 29, lines 1 and 2.
Page 34, all after the word "business" in line 3 down to and including line 18.
Page 35, all after line 19.
Page 36.
Page 37, lines 1 to 3 inclusive, and lines 19 to 26 inclusive.
Page 40, all after the parenthesis in line 12 down to and including line 20, and all after line 27.
247 Page 41, down to the word "objected" in line 16, and lines 20 to 27 inclusive and lines 31 to 35 inclusive.
Page 42, all preceding the period in the third line from the bottom.
Page 44, all after line 10.
Page 45, lines 1 to 20 inclusive.
15th. W. H. Klemme, as to conversation with the defendant Easton,
Page 58, all after line 3.
Page 59, lines 1 to 6 inclusive.
16th. Wm. H. Dent, recalled, as to condition of the bank,
Page 60, the first four words in line 17, being the words "W. H. Dent, recalled."
Page 62, all after line 15.
Page 63, lines 1 to 14 inclusive.
Page 70, all after line 2.
Page 71, down to and including the words "Easton and others" in line 8.
Page 76, lines 14, 15, 16, and 34.
Page 78, all after the parenthesis in line 30.
Page 79, lines 1 to 15 inclusive.
17th. Stipulation, as appears upon
Page 81, all after line 28.
Page 82, lines 1 to 9 inclusive.
18th. E. W. D. Holway, as to condition of the bank, as appears upon
Page 82, line 10, and down to and including the word "county" in line 23.
Page 88, after the word "value" in line 15, down to and including line 21.
Page 89, lines 23, 24, 25, 33, 34, and 35.
Page 90, line 8.
19th. Exhibits and letters written by Mr. Easton, as appear upon
Page 91, lines 26, 27, 28, and 29.
Page 103, all after line 23.
Page 104, lines 1 to 15 inclusive.
20th. Plaintiff rests; defendant offers no testimony; abstract of all the testimony; and bill of exceptions, as appear upon
Page 104, lines 16 to 24 inclusive.

21st. Motion to direct verdict in favor of the defendant, and ruling thereon, and exception to such ruling, as appears upon
Page 104, all after line 24.
Page 105, and
Page 106, lines 1 to 7 inclusive.
22nd. Instructions asked by defendant, as appears upon
Page 106, lines 8, 9, and 10, and all after line 23.
Page 107, lines 1 to 9 inclusive, and 18 to 27 inclusive.
23rd. Refusal of such instructions, and exceptions to such
248 refusal, as appears upon
Page 108, lines 11, 12, 13, and 14.
24th. Instructions given, and the exceptions thereto, as appear upon
Page 108, all after line 14.
Pages 109 to 114 inclusive.
Page 115, lines 1 to 27 inclusive.
25th. The verdict of the jury, as appears upon
Page 115, all after line 27.
26th. Motion in arrest of judgment, ruling thereon, and exceptions to such ruling, as appear upon
Page 116, lines 1 to 6 inclusive, lines 9 and 10, and all after line 17.
Page 117, and
Page 118, lines 1, 2, and 3.
27th. The motion for new trial, the ruling thereon, and the exceptions to such ruling, as appear upon
Page 118, lines 4 to 17 inclusive.
Page 120, the last four lines.
Page 121, the first four lines.
Page 122, lines 26, 27, and 28.
28th. The judgment against the defendant, and the exceptions thereto, as appears upon
Page 122, all after line 28.
Page 123, lines 1 to 8 inclusive.
29th. The appeal, bail on appeal, bill of exceptions, and abstract of the whole record, as appear upon
Page 123, all after line 8.
30th. The assignment of errors in the supreme court of Iowa, as appear upon
Page 124, lines 1 to 3 inclusive, lines 11 to 28 inclusive, and lines 31 and 32.
Page 125, line- 5 and 6, and all after line 10.
Page 126, down to and including the word "agents" in line 10.
Page 129, all after line 24.
Page 130, lines 1 to 6 inclusive, and lines 14 and 15.
31st. The opinion (decision) of the supreme court of Iowa in said cause.
32nd. The final judgment of said court.
33rd. The petition for the writ of error, and allowance thereof.
34th. The assignment of errors and prayer for reversal
249 filed with the petition for the writ of error.

35th. The writ of error, and allowance thereof.
36th. The supersedeas bond, and approval thereof.
37th. The citation, and the admission of service thereof.
38th. The return of the clerk of the supreme court of Iowa to the writ of error.
39th. The certificates of the clerk of the supreme court of Iowa to the record of said cause, and the endorsements upon each of the above-named papers.

The plaintiff in error further states,

That if it is held by this court in this case that sections 1884 and 1885 of the Code of Iowa (1897) are valid as against and lawfully apply to national banks duly organized under the laws of the United States and doing business as such in the State of Iowa, and to the plaintiff in error as an officer, to wit, the president, of one of such banks in receiving a deposit of money in and for such bank in the ordinary course of its business, that then he does not question the sufficiency of the evidence adduced upon the trial of said cause in the district court of Iowa in and for Fayette county to support the verdict of the jury and the judgment of said court against him; that he deems it unnecessary to set forth in the printed transcript of the record in this court all of such evidence; and that the portions above designated are all that he deems necessary to a consideration of the questions raised and errors assigned by him in this court.

JAMES H. EASTON,
Plaintiff in Error,
By H. T. REED, *His Attorney.*

Received copy of the foregoing statement this 7th day of June, 1901.

CHAS. W. MULLAN,
Attorney General of Iowa, Attorney for Defendant in Error.

[Endorsed:] In United States Supreme Court, October term, 1900. No. 658. James H. Easton, plaintiff in error, *vs.* The State of Iowa, defendant in error. Statement of the errors to be relied upon by plaintiff in error and of the parts of the record in support thereof. H. T. Reed, attorney, Cresco, Iowa.

250 [Endorsed:] File No. 18,143. Supreme Court U. S. October term, 1901. Term No. 313. James H. Easton, pl'ff in error, *vs.* The State of Iowa. Statement of errors & designation by plaintiff in error of parts of record to be printed & acceptance of service of same. Filed July 9th, 1901.

Endorsed on cover: File No. 18143. Iowa supreme court. Term No. 313. James H. Easton, plaintiff in error, *vs.* The State of Iowa. Filed May 4, 1901.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 312.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR THE PLAINTIFF IN ERROR.

[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 313.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR THE PLAINTIFF IN ERROR.

The plaintiff in error was convicted in the district court of Iowa in and for Fayette county upon an indictment charging him with the alleged offense of receiving, as president of a national bank doing business as such in said state, a deposit of one hundred dollars in money in and for said bank, in violation, as alleged, of a statute of the state of Iowa, and sentenced to imprisonment in the penitentiary of that state for a period of five years. He appealed from such judgment to the Supreme Court of Iowa, and that court, on April 12th, 1901, affirmed the judgment of the district court. He thereupon sued out this writ of error, and prays that such judgment be reversed.

STATEMENT OF THE CASE.

The indictment upon which the plaintiff in error was so convicted was found by the grand jury of Winnesheik county, in the state of Iowa, and the place of trial thereof duly changed to Fayette county, in said state. Omitting the formal parts, the indictment charges:

"That said James H. Easton on or about the 21st day of "August, A. D. 1896, in the county of Winnesheik, and state of "Iowa, aforesaid, being then and there engaged in the banking

" business as an officer, to-wit: president of the First National " Bank of Decorah, located and doing business as a bank of de- " posit and banking in the city of Decorah, in the county of Win- " nesheik and state of Iowa, did, as president of said bank as " aforesaid, unlawfully, wilfully, knowingly and feloniously per- " mit, connive at, encourage, accept, and receive on and for de- " posit in said bank, as aforesaid, a certain deposit in lawful " paper money, a more particular description of which is to these " grand jurors unknown, of and in the sum of one hundred dol- " lars, of and from one John French, being then and there " the property of said John French and of the value of $100; " the said bank being then and there insolvent, and the said " James H. Easton, then and there well knowing the said bank " was insolvent, contrary to and in violation of the statute of the " state of Iowa in such case made and provided." (Transcript of record, page 1.)

This indictment is founded upon chapter 153, acts 18th general assembly of Iowa, passed in 1880, and re-enacted with slight changes (not necessary to mention), as sections 1884 and 1885 of the code of Iowa (1897). These sections appear in chapter 12, title 9 of the code. Chapter 10 of this title provides for the organization and management of savings banks; chapter 11 for state banks, and chapter 12 for the further control and management of such banks. Sections 1884 and 1885 are as follows:

Section 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation, or person engaged in the banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks, or drafts, or renew any certificate of deposit. (18 G. A., chap. 153, § 1).

Section 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the peniten-

tiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. (Same, § 2.)

When arraigned upon the foregoing indictment, the plaintiff in error moved to set aside or quash the same upon the grounds, among others:

1st. That the statute of Iowa upon which said indictment is found does not, and was not intended to, apply to national banks, organized and doing business under the national bank act of the United States, or to the officers and agents of such banks.

2nd. That the congress of the United States having legislated upon the subject matter of national banks, provided for their organization, and authorized them, among other things, to accept and receive deposits; and prescribed rules and regulations for the government and control of such banks, such legislation excludes any by the state with reference to such banks or their business, management and control by their officers and agents; that the above mentioned acts of the legislature of the state of Iowa, if they be construed or held to apply to national banks, conflict with and are in violation of the constitution and laws of the United States.

3rd. That the courts of the state of Iowa have no jurisdiction or authority to inquire into, hear, try or determine the act of the plaintiff in error in receiving the said deposit in and for said national bank, for that said act is and was expressly authorized by the laws of the United States.

Which motion was overruled, and due exceptions taken. (Transcript, pages 2 and 3).

The plaintiff in error then demurred to the indictment, upon the grounds, among others:

* * *

2nd. That said indictment contains matter, which, if true, constitutes a legal defense or bar to the prosecution.

* * *

7th. That it appears from said indictment that said First National Bank of Decorah, Iowa, is and was at the time alleged in said indictment, a national bank, duly organized and doing a banking business under and by virtue of the laws of the United States, and that this defendant is, and was at the time alleged in said indictment, president of said bank, and as such accepted and

received on deposit in and for said bank the alleged deposit therein referred to.

8th. That the acts of the defendant stated in the indictment constitute no crime, because the statute of the state of Iowa prohibiting the receiving of deposits by a bank when insolvent, applies only to banks incorporated or doing business under the authority of the laws of this state and does not apply to national banks organized or doing business under the acts of congress.

9th. That this court has no jurisdiction to inquire into, hear, try or determine the act of this defendant in so accepting the said deposit in and for said national bank for

That said act of defendant in so accepting and receiving the said deposit in and for said bank is an act which is expressly authorized and permitted by the laws of the United States under which said First National Bank of Decorah Iowa, is organized.

10th. That if the law of Iowa under which said indictment is found applies to national banks or makes the accepting or receiving of deposits by said banks and their officers and agents an offense, it is in violation of the constitution and laws of the United States, and void.

Which demurrer was overruled and due exceptions taken. (Transcript pages 3 and 4).

The plaintiff in error then pleaded to said indictment that he was not guilty of the offense charged therein.

Upon the trial the testimony upon the part of the state, which is undisputed, shows:

That the First National Bank of Decorah, in Winnesheik county, was duly organized in 1864 as a banking association, under the acts of congress now commonly known as the "National Bank Act." The articles of association were duly signed and acknowledged by the requisite number of persons, and all things done as required by law to effect its complete organization, and certificate thereof made to the comptroller of the currency of the United States, who, on August 6, 1864, issued to the said bank the following certificate:

TREASURY DEPARTMENT.

OFFICE OF THE COMPTROLLER OF THE CURRENCY.

Washington, D. C., August 6, 1864.

Whereas, by satisfactory evidence presented to the undersigned,

it has been made to appear that the First National Bank of Decorah, in the village of Decorah, in Winnesheik county, Iowa, has been duly organized under and according to the requirements of an act of congress entitled "An Act to Provide a National Currency, Secured by a Pledge of United States Bonds, and to Provide for the Circulation and Redemption Thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, Hugh McCulloch, comptroller of the currency, do hereby certify that the First National Bank of Decorah, Iowa, in the village of Decorah, Winnesheik county, in said state, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office this sixth day of August, 1864.

(Seal) HUGH McCULLOCH,
Comptroller of the Currency.

(Transcript, page 5; and see pages 8 to 10 for the articles of association and the organization certificate.

That in 1883 the bank complied with the provisions of the act enabling national banking associations to extend their corporate existence; and on February 24, of that year, the comptroller of the currency issued to it a certificate like the foregoing so certifying. (Transcript, page 6).

That the bank began business on completion of its organization, and so continued to do a general banking business at Decorah, in said Winnesheik county, until November 10, 1896, when the comptroller of the currency of the United States closed its doors, took possession of its assets, and placed them in the custody of a receiver, who has since been in charge thereof. Up to the time the comptroller so took possession, the bank, by its officers and agents, did a general banking business, including the receipt of deposits, in the usual and ordinary way. That the plaintiff in error, was one of the directors of the bank and its president from the date of its organization up to the time the comptroller so took possession of the same; and from about June 1, 1894, was one of the active managers of the bank. On August 21, 1896, one John French delivered to the plaintiff in error in the said bank at Decorah, one hundred dollars in paper money, and received from him therefor a certificate of deposit, as follows:

THE FIRST NATIONAL BANK OF DECORAH.

$100. August 21, 1896.

John French has deposited in this Bank One Hundred Dollars, payable to the order of himself six months from date in current funds on the return of this certificate properly endorsed, with interest at the rate of four per cent. per annum. No interest after maturity. This certificate will not be paid before due.

Certificate of deposit; not subject to check.

No. 17689. JAMES H. EASTON, Pt.

(Transcript, page 5).

Previous to this transaction, and up to the time the bank was so closed, it had on deposit with the treasurer of the United States twenty thousand dollars in United States bonds to secure eighteen thousand dollars of national bank notes which were issued to it, and which were in circulation as a part of the currency or circulating medium of the United States. (Transcript, page 12). That the bank was regularly examined by the national bank examiners, and made the reports of its condition to the comptroller of the currency as required by law and whenever called upon therefor, and never refused to pay any of its obligations up to the time it was closed. (Baker's evidence, Transcript, page 18). That the indictment of the defendant is based upon this transaction with John French.

The testimony on the part of the state also tended to show that the bank was insolvent on August 21st, 1896, and that plaintiff in error so knew when he received the said money from John French on that date.

At the close of the state's testimony the plaintiff in error moved the court to direct the jury to return a verdict of not guilty, upon the grounds, among others:

1st. That the undisputed testimony affirmatively shows that the said First National Bank of Decorah, Iowa, was on August 21, 1896, a banking association, duly organized under and in pursuance of the laws of the United States, and that a certificate had been duly issued to said bank by the comptroller of the currency of the United States, in pursuance of the laws thereof, authorizing it to do a general banking business, including the receipt of deposits at Decorah, in Winnesheik county, Iowa, as au-

thorized by such laws of the United States, and that said bank was, on said August 21, 1896, then doing such banking business at said place under and in pursuance of and by virtue of such laws and said certificate of the comptroller of the currency of the United States and not otherwise.

2nd. That this defendant was on said August 21st, 1896, the duly appointed and qualified president of said First National Bank of Decorah; and,

3rd. That the deposit in question was accepted and received in said bank by this defendant as such president of said bank, and as authorized by said laws of the United States and the said certificate of the comptroller of the currency and not otherwise.

4th. That the laws of the United States under which said bank was so organized, authorized and permitted it by its officers and agents to receive therein deposits of money in the usual and ordinary course of its business; and that the deposit in question was so received in and for said bank, by this defendant as its said president, and not otherwise; and,

5th. That under such facts this court has no jurisdiction to inquire into, hear, try or determine the acts of this defendant in so accepting and receiving in and for said bank the said deposit, or to hear, try or determine whether or not said bank was insolvent at the time said deposit was so received, and that such facts do not constitute any offense for which defendant can be tried or punished under the laws of this state.

6th. That the facts as charged in the indictment do not constitute any offense punishable by law.

7th. That the laws of Iowa under which said indictment is found do not apply to national banks organized under the laws of the United States and doing business under the authority of and as permitted thereby; and is void as to such banks for that

8th. The general assembly of Iowa has no power or authority to enact any law that will in any manner affect or control the business or operation of national banks organized and doing business under and in pursuance of the laws of the United States and as authorized by such laws.

Which motion was overruled and due exceptions taken. (Transcript, pages 22 and 23).

The defendant offered no testimony.

After being instructed by the court, the jury returned a verdict

finding the plaintiff in error guilty of the offense charged in the indictment. (Transcript, page 30).

The plaintiff in error thereupon filed a motion in arrest of judgment, based upon substantially the same grounds as alleged in the motion to set aside or quash the indictment, the demurrer thereto, and the motion to direct the verdict. (See this motion Transcript, pages 30-31).

Which motion was overruled and due exceptions taken.

A motion for a new trial was also overruled and due exceptions taken.

The court thereupon rendered judgment against the plaintiff in error that he be imprisoned in the penitentiary of Iowa at Anamosa, at hard labor, for the period of five years, and pay the costs of prosecution; to which the plaintiff in error duly excepted. (Transcript, pages 31-32).

The plaintiff in error appealed from such judgment to the supreme court of Iowa, that being the highest court in said state in which a decision of said cause could be had, and separately assigned as error the action of said district court in overruling each of the grounds of [1] The motion to set aside the indictment; [2] The demurrer to the indictment; [3] The motion to direct a verdict of not guilty; [4] The motion in arrest of judgment; and [5] In rendering judgment against him upon the record as made in said district court. (Transcript, pages 33-34).

On April 12th, 1901, that court filed its opinion and rendered its decision, affirming the said judgment of the district court. (Transcript, pages 34-38).

In deciding the question so presented the court says:

"We do not find that this precise question has been passed upon " by the supreme court of the United States, the only tribunal that " may render a final determination of it. In the absence of such " a decision, we follow the law as announced in *State* vs. *Fields*, " without reviewing the authorities and reasons upon which it is " based." * * * "

(We append to this brief as Appendix A a copy of the opinion in *State* vs. *Fields*, 98 Iowa, 748, so referred to.)

The plaintiff in error thereupon sued out this writ of error to reverse such judgment. (Transcript, pages 38-45).

SPECIFICATION OF ERRORS.

The errors assigned in this court and relied upon by the plaintiff in error, are:

That the supreme court of Iowa erred,

First. In holding that the petitioner in accepting and receiving the deposit of money in and for the First National Bank of Decorah, Iowa, and as charged in the indictment in said suit, was subject to and amenable to sections 1884 and 1885 of the code of Iowa, (1897), and subject to prosecution and conviction under said state statutes in the courts of Iowa for so doing.

Second. In holding that the said state courts of Iowa have jurisdiction to inquire into, hear, try or determine the question of the validity of an authority of the petitioner, as president of a national bank organized under the laws of the United States, to-wit, the National Bank Act, and doing business as such in the state of Iowa, to accept and receive a deposit of money in and for such bank; or to determine the question of the validity or legality of the act of the petitioner in so doing.

Third. In holding that said sections 1884 and 1885 of the code of Iowa, (1897), are not repugnant to the constitution of the United States and to a law thereof, to-wit, the National Bank Act, in so far as they attempt to prohibit national banks, their officers and agents, from accepting and receiving deposits of money in and for such banks, and incurring an indebtedness for such banks, in the ordinary course of their business, unless the same is done in compliance with such sections of the law of Iowa; and in holding the said sections valid as against such national banks, their officers and agents, while engaged in the transaction of the ordinary business of such banks.

Fourth. In holding that an act done by the petitioner under the authority of the constitution of the United States, and of a law thereof, to-wit, the National Bank Act, and as expressly authorized by such law, to-wit, the receipt by him as president of a national bank in Iowa of a deposit of money in and for said bank is a crime against the laws of the state of Iowa and the petitioner subject to prosecution and conviction in the courts of Iowa for doing such act which is so expressly authorized by such law of the United States.

Fifth. In holding that it was within the rightful power of the state of Iowa, by an act of its general assembly, to make the act

of the president or other officer of a national bank organized under the laws of the United States and doing business as such in the state of Iowa in the transaction of the ordinary business of such bank, a crime, and to impose a penalty of fine or imprisonment upon such officer for the transaction of such business for such bank, unless the same be done in compliance with the laws of said state of Iowa.

Sixth. In denying to the petitioner the right, privilege, authority and immunity specially set up and claimed by him in said suit for an act done and authority exercised by him under the United States and the laws thereof, viz., the National Bank Act.

Seventh. In affirming the judgment of the district court of Iowa in and for Fayette county, adjudging the petitioner guilty of a violation of sections 1884 and 1885 of the code of Iowa, (1897), and sentencing him to imprisonment in the penitentiary of Iowa therefor; because said sections cannot rightfully have any force or effect as against an act done by the petitioner under a law of the United States, to-wit., the National Bank Act, and as expressly authorized by such law.

Eighth. In holding that said sections 1884 and 1885 of the code of Iowa, (1897), are not repugnant to the constitution of the United States; because they unjustly discriminate against national banks, their officers and agents, in transacting such business in Iowa, and make the incurring of a debt by such bank, in the ordinary course of its business and without any fraudulent intent, a crime or offense, and which would not be a crime or offense if incurred by other persons or corporations.

Wherefore, the petitioner, James H. Easton, prays that said judgments of the supreme court of Iowa and of the district court of Iowa in and for Fayette county, be each reversed, annulled and set aside, and that he be discharged and released from the effect thereof.

BRIEF OF THE ARGUMENT.

The legal proposition presented by the assignments of error and relied upon for the reversal of the judgment of the district court of Iowa in and for Fayette county against the plaintiff in error, and affirmed by the supreme court of that state, is,

That chapter 153 acts of the eighteenth general assembly of Iowa, enacted in 1880, and incorporated into the code of Iowa

(1897) as sections 1884 and 1885 thereof, in so far as it applies to national banks organized under the laws of the United States, and to the acts of the officers and agents of such banks in transacting their business, and in the performance of acts done by them therein, in pursuance of and as authorized by such law of the United States, is void as being repugnant to the constitution and such law of the United States.

This question was raised by the plaintiff in error in the district court of said state, the court in which the case originated, at the very threshhold of the proceedings against him, and renewed at every stage of such proceedings in said court. (Transcript, pages 2, 3, 22, 23, 30, 33). And after the judgment of said district court against him he appealed to the supreme court of Iowa and there renewed the same; but the judgment of the district was affirmed. (Transcript page 34).

I.

The plaintiff in error also contended in said district and supreme courts of Iowa that in view of the passage by congress of the National bank act, and the many decisions of this court determining the effect of such act upon the laws of the several states, that it could not have been intended by the legislature of Iowa in enacting such law that it should apply to national banks; and therefore that it should not be held to so apply; and cited among others the following named authorities:

McCullock vs. *Maryland*, 4 Wheat., 425; *Osborne* vs. *Bank*, 9 Wheat., 738; *Farmers' Nat. Bank* vs. *Dearing*, 91 U.S., 29; *Cook Co. Nat. Bank* vs. *U. S.*, 107 U. S., 445; *Commonwealth* vs. *Ketner*, 92 Penn., St., 372; *Allen* vs. *Carter*, 119 Penn. St., 192; *State* vs. *Mencke*, 56 Kas., 77.

The supreme court of Iowa in its decision of the case, however, holds that the statute does in fact apply to national, as well as state and private, banks conducting a banking business in Iowa, and "that the construction contended for would exempt all other " banks from the prohibitions and penalties of these sections, and " leave the public unprotected as against brokers and private " banks other than savings and state banks as conduct a de- " posit business." (Transcript, page 35).

It is doubtless our misfortune that we were unable to state our contention in this respect in such manner as to enable that court to understand our meaning. We certainly did not claim before

that court that such sections apply only to state and savings banks organized under title 9 of the code of Iowa. What we did claim will be best determined from a quotation from our brief in concluding our argument upon this proposition as follows: "It " would seem, then, that it must be held that the purpose of the " general assembly of Iowa was to provide for the organization " of state and savings banks and that the acts therefor together " with the acts of the eighteenth general assembly (sections 1884 " and 1885 of the code) form a complete system for the organiza- " tion, regulation, control and management of their business, *and* " *of such firms, companies and other persons* as do a banking " business, though *not incorporated under any statute*, so far as " the legislature deemed it advisable to regulate or control their " business. So construed, these sections are in harmony with the " rest of title 9 and can be upheld as a whole; otherwise they are " invalid as to national banks, as we shall presently endeavor to " show." It will thus been seen that the court entirely misapprehended our contention. But this is perhaps immaterial, as the court holds, as above stated, that these sections do in fact apply to national banks and "that it has no doubt that it was the intention of the legislature of Iowa that they should so apply."

In effect this holding would also make section 1889 of the code applicable to national banks, for this section provides, among other things, that " * * * No corporation shall engage in the " banking business, receive deposits and transact the business " generally done by banks *unless it is subject to and organized* " *under the provisions of this title*, or of the banking laws of the " state heretofore existing. * * * Any corporation violating " this section shall forfeit its charter, at the suit of the attorney " general, and said corporation, its officers, directors and agents, " shall be punished by a fine of not less than five hundred dollars " or imprisonment of not less than two years in the penitentiary, " or both, at the discretion of the court."

It may be said that as this is the decision of the highest court of a state construing a statute of such state, such construction, under familiar rules, is conclusive upon this court. If it be so held, then the question must be determined by this court as though this statute in terms prohibited "any national bank, doing business in Iowa, and its officers and managers," from receiving deposits of money in and for such bank except in compliance with the stat-

utes of Iowa. This brings us to the vital question in the case, viz.:

II.

If such law of Iowa does in fact apply to national banks, as well as to incorporated state banks, and individuals conducting a private banking business in Iowa, is it valid in so far as it applies to such banks, their officers and agents, conducting business in Iowa under the laws of congress?

We contend that it is not, and that the legal propositions which so determine are: that where an act is authorized to be done by a valid law of the United States, such act is thereby withdrawn from the operation of the criminal laws of the state; that such a law excludes any by the state upon the subject unless expressly permitted by the law of congress; and that the performance of such an act in pursuance of and as authorized by such law cannot be punished by the state as an offense against any of its laws. These propositions are clearly stated and held in the following named cases:

McCullock vs. *Maryland*, 4 Wheat., 425; *Osborne* vs. *United States Bank*, 9 Wheat., 738; *Ohio* vs. *Thomas*, 173 U. S., 276; *Prigg* vs. *Pennsylvania*, 16 Pet., 539; *Brown* vs. *Maryland*, 12 Wheat., 449; *Bank* vs. *Dearing*, 91 U. S., 29; *Schoellenberger* vs. *Pennsylvania*, 171 U. S., 1; *Thomas* vs. *Loney*, 134 U. S., 372; *Cunningham* vs. *Neagle*, 135 U. S., 1; *Cook County National Bank* vs. *United States*, 107 U. S., 445; *In re Waite*, 81 Fed. Rep., 359; *Commonwealth* vs. *Ketner*, 92 Penn. St. 372; *Allen* vs. *Carter*, 119 Penn. St., 192; *State* vs. *Mencke*, 56 Kas., 77; *People* vs. *Fonda*, 62 Mich., 401.

The distinction between the acts of the officers and agents of the bank as such in doing that which the law of congress authorizes in the performance of the business of such banks, and the rights of the bank under such acts, or contracts made thereby, must be observed and kept in mind. It is only upon the former that the law of Iowa is intended to, and does in fact, operate if it is valid.

The supreme court of Iowa finds and holds in this case that when the plaintiff in error received this hundred dollars from John French, on August 21st, 1896, the "First National Bank of De-" corah was open and transacting business in the usual manner; " had been for a long time prior thereto; and continued to do so

" until about November 10th, 1896, when it was found to be in-
" solvent and put into the hands of a receiver." (Transcript, page 34). This fact is conclusively established by the undisputed testimony in the case; which also shows that such receiver was appointed by the comptroller of the currency of the United States. The court then quotes the legal propositions stated by us and says, "This statement of the law is in substantial accord with
" the authorities, and the inquiry is, whether defendant was au-
" thorized by the law of congress to do the act for which he has
" been convicted." (Transcript, page 36).

1st. *Was the plaintiff in error, then, as the court inquires, authorized by the laws of congress to receive this money from John French, for the bank, on August, 21st, 1896, upon the terms stated in the certificate of deposit or paper issued therefor by him as president of the bank?*

Sections 5133 to 5243, inclusive, Revised Statutes United States, are known as the "National Bank Act;" (Section 1, act of June 20, 1874). A bank organized in pursuance of this law has authority, among other things:

Section 5136. * * 3d. To make contracts. * * 6th. To prescribe, by its board of directors, by-laws regulating the manner in which * * its general business shall be conducted, and the privileges granted it by law exercised and enjoyed. 7th. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes and drafts, bills of exchange, *by receiving deposits*; by buying and selling exchange; * * by loaning money on personal security. * *

Section 5145. The affairs of such association shall be managed by not less than five directors, who shall be elected by the shareholders. * *

And it is required by

Section 5159. To deposit with the treasurer of the United States as security for its circulating notes, United States interest bearing bonds in an amount not less than one-fourth of its capital.

Sections 5214-15. To report to the treasurer of the United States twice each year the average amount of its deposits, and to pay to said treasurer each half year a tax upon such deposits.

Section 5202. No such association shall at any time be indebt-

ed or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by loss or otherwise, except on account of demands of the following nature, * * moneys deposited with or collected by the association.

Sections 5211-12. Every such association shall make to the comptroller of the currency not less than five reports during each year, (and special reports as often as he may require), according to such form as may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, * * which report shall exhibit in detail and under proper heads the resources and liabilities of the association. * *

Section 5240. The comptroller of the currency shall appoint a suitable person or persons to make the examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and in doing so to examine any of the officers or agents thereof on oath, and make a full and detailed report of the condition to the comptroller.

Section 5234, (as amended by section 1 of the act of June 30th, 1876). Whenever the comptroller becomes satisfied of the insolvency of such a bank he may, after due examination of its affairs, appoint a receiver, who shall take possession of the assets of such association, wind up its affairs, and make ratable distribution of its assets.

Section 5209 imposes severe penalties upon any officer or agent of such association who violates any of the provisions of such National Bank Act.

This act covers the entire subject matter of national banks; provides for their organization, the business they may transact, and for the regulation, management, and control of such business under the supervision of an officer of the United States; expressly authorizes the bank, when organized, *to receive by its officers deposits of money* to an unlimited amount without other restrictions or conditions than those imposed by the act itself; and it would seem directly answers in the affirmative the inquiry as above propounded by the supreme court of Iowa. That court, however, refers to its former decision in *State* vs. *Fields* as holding that the receipt of a deposit by a national bank officer *is not within the provisions of the laws of the United States*, but subject to such conditions as the several states may see fit to impose

thereon. An analysis of this decision will show, we think, that it is grounded upon two propositions, viz.: (1) That national banks are organized and their business prosecuted for the purpose of private gain; (2) That congress has imposed no restrictions upon the bank in receiving deposits, nor penalties upon its officers for so doing. It is therefore concluded that the state may regulate this private business of such banks and impose such conditions and restrictions upon the transaction thereof as it sees fit, and punish the bank and its officers for transacting such business in violation of such conditions and restrictions. It is believed that such propositions are not well founded, and that the conclusion drawn therefrom is directly opposed to those of this court in the cases above cited.

In *Osborne* vs. *Bank*, 9 Wheat., 738, it appears that the legislature of Ohio had passed a law levying a tax upon any bank that should transact a banking business in that state unless allowed by its laws to do so, and authorized the auditor of state to seize the property of the bank to satisfy this tax. The United States Bank continued to transact business in the state in violation of this state law and Osborne as auditor of state caused to be seized certain moneys of the bank and was about to apply the same in satisfaction of the tax. The bank brought suit in the United States circuit court to restrain the collection of the tax and to have the money seized by the auditor restored to it, and upon the hearing in the circuit court the bank was awarded a decree as prayed, and Osborne appealed. Chief Justice Marshall, in delivering the opinion of the court, beginning at page 850 says, (after disposing of the question of jurisdiction): "While it (the " bank) is the great instrument by which the fiscal operations of " the government are effected, it is also trading with individuals " for its own advantage. The appellants endeavor to distinguish " between this trade and its agency for the government. * * " While they seem to admit the right to preserve this corporate " existence, they deny the right to protect it in its trade and busi- " ness. * * Let this distinction be considered. Why is it that " congress can create or incorporate the bank? This question " was answered in the case of *McCullock* vs. *Maryland*. It is an " instrument which is necessary and proper for carrying on the " fiscal operations of the government. Can this instrument, on " any rational calculation, effect its object unless it be endowed " with that faculty of lending and dealing in money, which is

"conferred by its charter? If it can, there will be much difficulty "in sustaining that essential part of the charter. If it cannot, "then this faculty is necessary to the legitimate operations of "the government, and was constitutionally and rightly en- "grafted on the institution. It is in that view of the subject the "vital part of the corporation. * * Deprive a bank of its trade "and business which is its sustenance, and its corporate charac- "ter will be a very useless attribute. The distinction then has "no real existence. To tax its faculties, its business and occupa- "tion is to tax the bank itself; to destroy or preserve the one is "to destroy or preserve the other. * * We do not maintain "that the corporate character of the bank exempts its operations "from the action of state authority. If an individual were to be "endowed with the same faculties for the same purposes, he "would be equally protected in the exercise of those faculties. "The operations of the bank are believed not only *to yield the* "*compensation for its services* to the government, but to be es- "sential to the performance of these services. Those operations "give its value to the currency in which all the transactions of "the government are conducted; they are therefore inseparа- "bly connected with those transactions, and are therefore of "the very essence of its character as a national instrument. "The business of the bank constitutes its capacity to perform its "functions as an instrument for the money transactions of the "government. Its corporate character is merely an incident "which enables it to transact that business more beneficially. "Were the secretary of the treasury to be authorized by law "to appoint agencies throughout the Union to perform the pub- "lic functions of the bank and to be endowed with its faculties "as a necessary auxiliary to these functions, the operations "of those agents would be as exempt from the control of the "states as the bank, and not more so. If instead of the secre- "tary of the treasury, a distinct office were to be created for the "purpose and filled by a person who should receive as a compen- "sation for his time, labor and expense, the profits of the bank- "ing business instead of other emoluments to be drawn from the "treasury, would each state in the Union possess a right *to con-* "*trol these operations?* The question on which this right must "depend must always be: are these faculties so essential to the "fiscal operations of the government as to authorize congress to "confer them? Let this be admitted, and the question: does the

" right to preserve them exist? must always be answered in the " affirmative. Congress was of opinion that these faculties were " necessary to enable the bank to perform the services which are " exacted from it and for which it was created. This was cer- " tainly a question proper for the consideration of the legislature, " but were it now to undergo revision who would have the hardi- " hood to say that without the employment of a banking capital " those services can be performed? * * And who will venture " to affirm that *the separation of them would not materially af-* " *fect and essentially impair, if not totally destroy*, the utility of " the machine to the government? And if this be true, the capa- " city to carry on this trade is a faculty indispensable to the char- " acter and object of the institution." After disposing of the contention that congress should have expressed the exemption of the bank from state control, and not being so expressed ought not to be implied by the court, and of some other questions, he continues: "The appellants rely greatly upon the distinction between " the bank and the public institutions, such as the mint or the " postoffice; and the connection of the government with the bank " is likened to that with contractors. It will not be contended " that the directors, or other officers of the bank, are officers of " the government. But it is contended that, were their resem- " blance to contractors more perfect than it is, the right of the " state to control its operations, if those operations be necessary " to its character as a machine employed by the government, can- " not be maintained. Can a contractor for supplying a military " post with provisions be restrained from making purchases with- " in any state? * * Or could he be fined or taxed for doing so? " We have not yet heard these questions answered in the affirma- " tive. It is true that the property of the contractor may be " taxed, as the property of other citizens; and so may the local " property of the bank. *But we do not admit that the act of* " *purchasing* * * can be under state control. * * Consider- " ing the capacity of carrying on the trade of banking, as an im- " portant feature in the character of this corporation, which was " necessary, to make it a fit instrument for the objects for which it " was created, the court adheres to its decision in the case of *Mc-* " *Cullock* vs. *Maryland*, 4 Wheat., and is of opinion that the act " of the state of Ohio is repugnant to a law of the United States " made in pursuance of the constitution, and, therefore, void. * " And at page 859 he says: "The foundation of the argument in

"favor of the right of the state to tax the bank is laid in the sup-
"posed character of that institution. The argument supposes
"the corporation to have been originated for the management of
"an individual concern, to be founded upon contract between in-
"dividuals, having private trade and private profit for its great
"end and principle object. If these premises were true, the con-
"clusion drawn from them would be inevitable. • • But the
"premises are not true; the bank is not considered as a private
"corporation whose principal object is individual trade and indi-
"vidual profit, but as a public corporation created for public and
"national purposes. "That the mere business of banking is in
"its own nature a private business, and may be carried on by in-
"dividuals or persons having no political connection with the
"government is admitted, but the bank is not such an individual
"or company. It was not created for its own sake or for private
"purposes. *It has never been supposed that congress could cre-*
"*ate such a corporation.* The whole opinion of the court in the
"case of *McCullock* against *Maryland* is founded on and sustain-
"ed by the idea that the bank is an institution which is necessary
"and proper for carrying into effect the power vested in the gov-
"ernment of the United States."

In *McCullock* vs. *Maryland*, 4 Wheat., the facts, as will be remembered, were that an act of the legislature of the state of Maryland prohibited any bank not organized under the laws of that state and any officer thereof from issuing any bank notes except upon stamped paper furnished by the state of Maryland therefor, and provided that any bank or officer violating said law should forfeit for each violation a certain amount, which might be recovered by indictment or action of debt. McCullock, as cashier of a national bank organized under the laws of congress, issued a bank note on behalf of the bank in violation of the provisions of such law of the state, and an action was brought by the state to recover the penalty provided by the act of its legislature. It was held that congress not only had the power under the constitution to authorize the organization of the bank, but that it was the sole judge of the necessity for its organization; and when organized it was an instrumentality of the government to aid it in carrying on its fiscal operations; and that the state could not rightfully impose any conditions or restrictions upon any act of the bank which congress had authorized it to do.

In *Farmers' National Bank* vs. *Dearing*, 91 U. S., 29, a statute of the state of New York imposed as a penalty for the taking of a greater rate of interest upon a loan of money in that state than allowed by its laws, the forfeiture of the entire debt. The court of appeals of that state held this law applicable to and valid as against a national bank doing business in that state. In reversing such judgment this court says: "National banks organized " under the National Bank Act are instruments designed to be " used to aid the government in the administration of an impor- " tant branch of the government service. They are means appro- " priate to that end. Of the degree of the necessity which existed " for creating them congress is the sole judge. Being such means, " brought into existence for this purpose, and intended to be so " employed, the state can exercise no control over them nor in " any wise affect their operation except in so far as congress may " see proper to permit. Against the national will the state have " no power, by taxation or otherwise, to retard, impede, burden, " or in any manner control the operations of the laws enacted by " congress to carry into execution the powers vested in the gen- " eral government. • • The principle announced in the authori- " ties cited is indispensable to the efficiency, the independence, and " indeed to the beneficial existence, of the general government; " otherwise it would be liable, in the discharge of its most impor- " tant trusts, *to be annoyed and thwarted by the will or caprice* " *of every state in the Union.* • • It must be borne in mind that " the constitution of the United States, and the laws that shall be " made in pursuance thereof, are the supreme law of the land, and " that this law is as much a part of the law of each state, and as " binding upon its authorities and people, as its own local consti- " tution and laws. • • In any view that can be taken of this " 30th section the power *to supplement it by state legislation* is " conferred neither expressly nor by implication."

In *Cook County National Bank* vs. *United States*, 107, U. S., 445, this court in speaking of the effect of the National Bank Act upon another statute of the United States previously passed, says: " We consider the National Bank Act as constituting by itself a " complete system for the establishment and government of na- " tional banks, prescribing the manner in which they may be " formed, the amount of circulating notes they may issue, and the " security to be furnished for the redemption of those in circula- " tion, * * their liability to be placed in the hands of a receiver,

"and the manner in such event in which their affairs shall be "wound up and their property applied to the payment of their "debts. Everything essential to the formation of the banks; "the issue, security and redemption of their notes; the winding "up of the institutions; and the distribution of their property, "are fully provided for as in a separate code by itself, neither lim- "ited nor enlarged by other statutory provisions with respect to "the settlement of demands against other insolvent estates. * * "A law embracing an entire subject, dealing with it in all its "phases, might thus withdraw the subject from the operation of "a general law as effectually as though the general law was re- "pealed. * * "

The later decisions of the state courts are to the same effect. Only a few need be referred to.

In *State* vs. *Mencke*, 56 Kas., 77, the defendant, as cashier of a national bank in Kansas, was indicted for knowingly receiving deposits in said bank when it was insolvent, the indictment being under a statute of Kansas in all respects the same as that of Iowa. The indictment was quashed upon the ground that the statute did not apply to national banks, though it in terms prohibited "any bank and its officers and agents" from accepting deposits when such bank was insolvent. The state appealed, and the supreme court in affirming the judgment quashing the indictment says: "By an examination of the title and the several pro- "visions of the code it will clearly appear that it was not the "purpose of the legislature to regulate or control the business "conducted by national banks, nor that the penalties prescribed "would be operative as against the officers of national banks. "It first provides for the organization of banks, and as the state "has no power to organize or control national banks, it is mani- "fest that no other than state banks was in mind. * * The "supervision and control of banks and banking officers, for "which provision was being made, was given to a bank commis- "sioner, whose duties are prescribed by the same act, and cer- "tainly it could not have been the legislative purpose to give "that officer supervision and control of national banks." The same is true of the statute of Iowa, which appears in "Appendix B" hereto appended.

In *Commonwealth* vs. *Ketner*, 92 Penn. St., 372, the defendant as the cashier of a national bank, was indicted for the alleged offense of embezzlement of the funds of such bank. In ordering his

discharge upon habeas corpus from the arrest under such indictment the court says: "The statute of this state does not in terms " refer to national banks, and we must presume that when the " legislature used the words 'any bank' it referred to banks cre- " ated under and by virtue of the laws of Pennsylvania. * * An " act of the assembly prescribing the manner in which the busi- " ness of all banks should be conducted could not by implication " apply to national banks, for the reason that the affairs of such " banks are exclusively under the laws of congress. Much less " can we by mere implication extend penal statutes to such insti- " tutions." It is held that the court was without jurisdiction to try the defendant, and he was discharged.

In *Allen* vs. *Carter*, 119 Penn. St., 192, a law of Pennsylvania prohibited the cashier of any bank in that state from engaging in any other business; and it is held that such law has no application to cashiers of national banks, though in terms it extended to "all banks." It was contended in this case that inasmuch as congress had imposed no restrictions upon the cashiers of national banks from engaging in other business, that the state law would apply, as held in *State* vs. *Fields*. The court, however, says: " We are of opinion that the distinction referred to is one with- " out a difference. *Commonwealth ex rel. Torrey* vs. *Ketner*, " 92 Penn. St., 372, was decided upon the broad ground that our " statutes in regard to embezzlement do not apply to cashiers of " national banks. * * We held then, and hold now, to the " broader position that our statutes have no application. The " national banks are creatures of another sovereignty. The Na- " tional Bank Act and its supplements are a complete system for " the government of these institutions. Conceding the power of " congress to create the system I am unable to see how it can be " regulated or interfered with by state legislation. * * If the " state may impose one qualification upon national banks why " not another? And if so, they will be liable to be interfered with " in every step, and it might not be long before the whole nation- " al banking system would have to be thrown aside as so much " worthless lumber." *People* vs. *Fonda*, 62 Mich., 401, and *Slaughter* vs. *Bank*, 109 Ala., 159, are to the same effect.

The foregoing cited authorities show the effect of the National Bank Act upon the laws of the state designed to operate upon or affect the operations of national banks, or their officers or agents, in transacting the ordinary business of such banks. Other de-

cisions show the effect of state laws intended to affect or operate upon other acts authorized to be done by a law of the United States, thus,

In *Ohio* vs. *Thomas*, 173 U. S., 276, the defendant was convicted in a state court of Ohio for violating a statute of that state regulating the sale and use of oleomargarine, and sentenced to pay a fine and to be imprisoned until it was paid. He refused to pay the fine, and upon his application to the circuit court of the United States for the southern district of Ohio, was released and discharged therefrom upon habeas corpus, upon the ground that the state court had no jurisdiction to try him for the alleged offense of which he was convicted. At the time of the act for which he was convicted he was governor of a branch of the National Home for Disabled Volunteer Soldiers, located in Ohio, and the act for which he was so convicted was for using oleomargarine in such home without complying with the provisions of an act of the legislature of the state regulating the sale and use of such article. This home was created and established under the provisions of an act of congress so authorizing; was controlled by a board of managers having certain powers, among them to make by-laws, rules and regulations for carrying on the business and government of the home. In affirming the judgment of the circuit court and of the circuit court of appeals for the sixth circuit, this court says: "We mean by this to say that federal offi-"cers who are discharging their duties in the state and who are "engaged in superintending the internal government and man-"agement of a federal institution under the lawful direction of its "board of managers, with the approval of congress, are not sub-"ject to the jurisdiction of the state in regard to matters which "are thus approved by federal authority."

The only act of congress authorizing the act of the defendant was, that it had made an appropriation to cover the expenses of maintaining the home for a given period, based upon an estimate thereof made by its board of managers, which estimate, it seems, included an item for the purchase of oleomargarine. In answer to the contention of the state that neither the governor nor board of managers could violate the law of the state when the acts constituting the infringement are not necessary for the government and management of the home, the court says: "This may be conced-"ed and still the conviction of the appellee be invalid, because we "find in this record the authority of the United States for his act.

" * * The act of the governor of the home in serving oleomar-
" garine was authorized by congress, and it was therefore legal,
" any act of the state to the contrary notwithstanding. Under
" such facts the state court had no jurisdiction to try the defend-
" ant for the acts charged in the complaint:" *In re Waite*, 81 Fed. Rep., 359, is cited with approval by the court in support of its conclusion. The conviction of the defendant is held invalid upon two grounds, viz.: (1) That the act charged as an infringement of the state law was performed by him as a part, or at least within the scope, of his duties as governor of the home; and, (2) though such an act may not have been necessary for the government and management of the home for the purposes for which it was created, yet having been done by him under and by virtue of a law of the United States (because an appropriation had been made by congress to cover an estimated item of expense, for the purchase of oleomargarine) it was not within the lawful power of the state to punish such act as an offense against its laws.

In re Waite, thus referred to, the petitioner Waite was a clerk in the office of the commissioner of pensions of the United States. The law of congress authorizes the commissioner to detail clerks from such office to investigate the merits and validity of claims of disabled soldiers who are applicants for pensions under the laws of the United States; but they have no power to compel the making of an affidavit, or the giving of testimony in any way. (Rev. Stat. U. S., sec. 4744). The petitioner Waite had been detailed by the commissioner of pensions as one of such examiners, and in the performance of his duties as such called upon one Andrus, in Howard county, Iowa, Andrus being an applicant for a pension, and requested him to make a statement and affidavit in regard thereto. Andrus claimed that he declined to make or sign such a statement as the examiner had prepared because it was untrue, and that thereupon the examiner "maliciously threatened to accuse him of the crime of perjury" in making a certain affidavit and to prosecute him to conviction therefor if he would not sign and swear to the statement as prepared by the examiner. For this alleged act Waite was indicted by the grand jury of Howard county, under section 4767 of the code of Iowa (1897), (which imposes a penalty for maliciously threatening to accuse another of a crime, with intent thereby to compel him to do an act against his will), and upon the trial in the district court it was found by the jury as a fact that he had committed this offense as

alleged; and it was held by the court that in so doing he had exceeded his authority and stepped outside of the duties he was authorized to perform under the laws of the United States, and that such law afforded him no protection for so violating the law of the state; he was adjudged guilty and sentenced to pay a fine and to be imprisoned until such fine was paid. Upon appeal the supreme court of Iowa affirmed the judgment of the district court. See *State* vs. *Waite*, 101 Iowa, 377. Thereupon Waite applied to the United States district court for the northern district of Iowa for a writ of habeas corpus, upon the grounds that the acts so charged in the indictment were done by him within the scope of his duties as an agent of the United States and in pursuance of and under the authority of its laws; that the state courts had no jurisdiction to try him for said acts. The writ was granted, and upon the final hearing thereof, he was discharged by Judge Shiras. This decision was affirmed by the United States circuit court of appeals for the eighth circuit. In the course of his opinion, Judge Shiras, says: "The rule deducible from the decided cases, and "well sustained on principle and authority, is, that where a per-"son seeks the benefit of the laws of the United States upon some "matter wholly within federal control * * the test of the le-"gality of the acts done by him is to be found in the laws of the "United States. It is clear *that the state cannot directly legis-"late upon these matters* because they are out of the plane of "state control and jurisdiction, and therefore the statutes of the "state cannot by judicial interpretation be made applicable "thereto. * * The state statutes do not furnish the test of the "legality or criminality of the acts done by the pension examiner "when engaged in investigating the merits of a claim under the "pension laws." Again, he says: "The question which marks "the limit of the state jurisdiction is whether the person sought "to be called to account was acting under *the authority of "the United States*, when the acts complained of were done in "and about a subject matter within federal control, * * for the "criminal statutes of the state are not applicable to acts done "within the plane of federal jurisdiction and under the authority "of the United States. Whenever, therefore, it is made to appear "in a criminal case pending in the state court that the acts "charged in the indictment were done by defendant as an officer "or agent of the United States in and about a matter within

"federal control * * then it is made to appear that the court "is asked to assume a jurisdiction which it cannot rightfully ex- "ercise; and if that court entertains the case and proceeds to ad- "judicate on the question of the extent of the authority possess- "ed by officers of the United States, *testing the same by the pro- "visions of state statutes* it proceeds at the peril of having its "jurisdiction questioned and denied either by writ of error to the "supreme court of the United States, or by a writ of habeas cor- "pus from either of the courts of the United States." In conclu- sion it is held that the petitioner was entitled to be discharged from custody and released from payment of the fine imposed for the reasons: "First. That it appeared that it was being at- "tempted to apply the criminal provisions of the statutes of the "state to acts done and proceedings had under the laws of the "United States. * * Third. That it was made to appear that "it was sought to subject an officer or agent of the United States "to punishment under the criminal statutes of the state for acts "done by him under the authority of the United States in connec- "tion with a subject matter wholly within federal control and "jurisdiction."

At the time this case was before Judge Shiras, the *State* vs. *Thomas* was before Judge Taft in the circuit court of the United States in Ohio, and the same conclusion was independently reached by him. See his opinion, 82 Fed. Rep., 302.

In *Cunningham* vs. *Neagle*, 134 U. S., 1, it is held that acts done in pursuance of an authority of the United States, whether that authority is given by statute or by an officer of the govern- ment in his official capacity, are acts authorized by virtue of the laws of the United States, and therefore beyond the power of the state courts to inquire into.

It may be urged, as it was before the supreme court of Iowa in this case, that the last three cases are where officers or agents of the United States were engaged in the performance of their duties as such, and therefore are not applicable. *In re Waite*, however, if the petitioner did that which the jury found upon the trial that he did do, then he did an act entirely outside of his duty as an agent of the pension bureau, and one not author- ized by any law of the United States. In the present case, the plaintiff in error received this money as president of a national bank, an agency or instrumentality of the United States which can only act through its officers or agents; and he is therefore

within the principle of the decisions. *Osborne* vs. *Bank*, above, at page 866. A national bank, when organized in pursuance of the laws of the United States, is a federal institution, an "instrumentality of the government, a means appropriate to the end for which it is permitted to be organized," as well as the soldiers' home or any other institution which congress may see fit to establish, and as much entitled to the protection of its laws.

It is not alone, however, an officer or agent of the United States that is within the principle of the authorities. The test is, Is the act one which a law of the United States authorizes to be done? If it is, then the performance of such act is within the protection of such law, and he who is authorized to perform it is entitled to the protection of such law in so doing, whether he does it in his capacity as an individual or as an officer or agent of the United States. It is so held in numerous cases in this court. Thus,

In *Prigg* vs. *Pennsylvania*, 16 Pet., 539, the plaintiff was convicted in the courts of Pennsylvania of a violation of a statute of the state for doing an act which he was authorized to do under the laws of the United States commonly known as the Fugitive Slave Law. Under such law the plaintiff, as agent of a citizen of the state of Maryland, forcibly seized, in the state of Pennsylvania, a negro woman claimed by the citizen of Maryland as a slave who had escaped from said state into Pennsylvania, and carried her back and delivered her to such citizen of Maryland. For this act he was indicted and convicted under a statute of Pennsylvania forbidding such acts. He justified his act upon this law of congress, and contended that if the law of Pennsylvania under which he was convicted was held to apply to the act done by him it was void as being an unauthorized exercise of power on the part of the state legislature over a matter reserved to congress under the constitution of the United States, and upon which congress had legislated. Three questions at least were considered and decided by the court: (1). Was the control of the subject matter under consideration exclusively reserved to congress under the constitution? (2). If only authority concurrent with that of the states was given to congress, then did the fact that congress had legislated upon the subject matter operate to exclude any legislation by the state thereon? (3). Was the act of the legislature of Pennsylvania prohibiting the doing of an act authorized by congress to be done, void as being repugnant to such law of congress? Each of these questions is answered or de-

cided in the affirmative; the first and second by a majority, and the last by the unanimous opinion of the court. Mr. Justice Story delivered the majority opinion; and in speaking of the scope and effect of the acts of congress upon subjects properly within its control, beginning at page 617, says: "This act may be truly " said to cover the whole grounds of the constitution, * * not " because it exhausts the remedies which may be applied by con- " gress if the provisions of the act in practice shall be found not " to attain to the object intended; but because it points out fully " all the modes of attaining these objects which congress, *in its* " *discretion, has as yet deemed expedient or proper to enact.* If " this be so, then it would seem, upon just principles of construc- " tion, that the legislation of congress, if constitutional, *must* " *supersede all state legislation upon the same subject*, and by ne- " cessary implication prohibit it. For, if congress have a consti- " tutional power to regulate a particular subject, and does regu- " late it in a given manner, and in a certain form, it cannot be " that state legislatures have a right to interfere, and, as it were, " by way of complement to the legislation of congress, *prescribe* " *additional regulations, and what they may deem auxiliary pro-* " *visions for the same purpose.* In such case, the legislation " of congress, in what it does prescribe, manifestly indicates " that *it does not intend that there shall be any further legisla-* " *tion* to act upon the subject matter. Its silence as to what " it does not do, is as expressive of what its intention is as the " direct provisions made by it." It is therefore held that when congress has legislated upon a subject rightly within its control, though not exclusively so, such legislation excludes any by the states upon the same subject; and also that the act of the legislature of Pennsylvania in prohibiting or imposing a penalty for doing an act directly authorized by congress was in contravention of the paramount law of congress, and void.

To the same effect is *Hall* vs. *DeCuer*, 95 U. S., at 499, where, in speaking of the effect of the legislation of congress, Mr. Justice Clifford says: "In such case the legislation of congress in what " it does prescribe manifestly indicates that it does not intend " that there shall be any further legislation to act upon the sub- " ject matter. Its silence as to what it does not do is as express- " ive of what its intention is as the direct provisions made by it."

In *Brown* vs. *Maryland*, 12 Wheat., 436, the plaintiff in error was convicted in a state court of selling a package of foreign

goods imported by him, without paying the license required therefor by a statute of the state. This court, in setting aside such judgment and conviction, says, at page 448: "Any penalty "inflicted upon the importer for selling the article, in his charac- "ter as importer, must be in opposition to the act of congress "which authorizes importation. Any charge on the introduc- "tion and incorporation of the articles into and with the mass "of property in the country, must be hostile to the power given "to congress to regulate commerce, and therefore void."

In *Schollenberger* vs. *Pennsylvania*, 171 U. S., 1, the validity of an act of the legislature of Pennsylvania prohibiting the manufacture or sale within that state of oleomargarine is called in question. In holding this law to be invalid, the court holds that it is not within the rightful power of the state to prohibit the introduction or sale therein of a recognized article of commerce manufactured in another state. That the act of congress of August 2, 1886, recognizes oleomargarine as a legitimate article of commerce, regulates the manufacture and sale thereof, imposes a tax thereon, and upon wholesale and retail dealers therein, and because of this that the several states have no right to prohibit its introduction from other states and sale therein *so long as it is introduced and sold as and for what it really is*. It will be observed that by the Oleomargarine Act of August 2, 1886, Sec. 3243 Rev. Stat., U. S., relating to internal revenue is made to apply so far as applicable, which section expressly provides that the revenue act shall not exempt a person from any penalties lawfully imposed by the laws of any state, etc. The National Bank Act contains no such provisions. The principle announced and holding is, that if the person does only that which the act of congress or the federal constitution authorizes or recognizes as a legitimate act, the state has no power to say that such act constitutes a crime.

Leisy vs. *Hardin*, 135 U. S., 100, and *Rhodes* vs. *State of Iowa*, 170 U. S., 412, are to the same effect. See also *Thomas* vs. *Loney*, 134 U. S., 372; *in re Blackbird*, 109 Fed. Rep., 139, and *Peters* vs. *Malin*, 111 Fed. Rep., 244, and cases cited.

The effect, therefore, of the National Bank Act upon state laws is to suspend the operation of those previously enacted, and to render invalid those subsequently enacted, in so far as they affect the persons and subject matter covered by the acts of congress.

Sturgis vs. *Crowninshield*, 4 Wheat., 122; *Tua* vs. *Carriere*, 117 U. S., 201; *Harbaugh* vs. *Costello*, 56 N. E. Rep., 303, (Ill).

These cases arose under the National Bankruptcy Law, and in the last named case it is said: "The state laws in force must "yield to it, and can no longer operate upon persons or cases "within the purview of the federal statute. * * If the state "law and the federal act operate upon the same subject matter "and upon the same persons, * * they cannot go together "without direct and positive collision, and in such case the fed-"eral enactment suspends or supersedes the state law."

In *State* vs. *Fields* a supposed case is stated thus: "Suppose "that the deposit in question had been of such an amount that "the depositor thought it important to inquire of the president "of the bank as to its condition as to solvency, and had been "answered that it had ample means and a large surplus, and on "the face of such representation the deposit had been procured, "and in a few days it should turn out that these representations "were, to the knowledge of the president, untrue." And it is asked, "What defense could be interposed to an indictment under "the statute for obtaining money by false pretenses?" It is conceded that the supposed case is not parallel with the one before the court. That court, however, holds that the fact alone that a national bank remains open and conducts its business in the usual manner under the laws of the United States is the equivalent of an affirmative fraudulent representation that it is solvent, and that those so permitting the bank to remain open and conduct its business are subject to prosecution and conviction for obtaining money by false pretenses from those depositing money in such bank, if it was in fact insolvent, and *National Bank* vs. *Commonwealth of Kentucky*, 9 Wall., 353, is cited as sustaining this proposition.

If this is correct, then the comptroller of the currency is a party to such crime, if not in fact the principal offender, for he is charged by the law of congress with the duty of ascertaining and knowing the condition of the bank, and if he finds it to be insolvent, to close it. Again, sections 1884 and 1885 in such event are wholly unnecessary, for sec. 5041 of the code of Iowa had already provided for the punishment of such false pretenses as a felony, and the legislature did a vain and unnecessary thing in again providing for the punishment thereof. The proposition, however, is not correct. *Lupin* vs. *Marie*, 6 Wend., 77; *Nichols* vs. *Pinner*, 18 N. Y.,

295; *Smith* vs. *Smith Murphy Co.*, 21 Penn. St., 367. The language quoted in *State* vs. *Fields* from the opinion in *Bank* vs. *Com.* must be limited and restrained in its application to the case actually before the court and decided by it, and does not justify the conclusion drawn therefrom by Mr. Justice Rothrock as being applicable to the case actually before him for determination. It appears in that case that the legislature of Kentucky, in pursuance of the authority expressly conferred by the National Bank Act (Sec. 5219, Rev. Stat. U. S.) had provided for the levy of a tax upon the individual owners of shares of stock in all banks, including national and other moneyed corporations, at a specified rate; and if the tax so levied was not paid by such owner, it might be collected from the bank. The shareholders of the First National Bank of Louisville, in that state, having neglected to pay the tax so assessed upon their shares, the state brought suit against the bank to recover the amount of such tax. It was contended by the bank in defense of the action that the tax was in effect one upon it, and therefore unauthorized under the repeated decisions of the court, and that it was not liable therefor. The court held that if the tax was in fact upon the bank it would be void; but that it was not such a tax, and in fact only a tax upon the individual shareholders which the state was authorized by congress to levy, and that the provision of the state legislature providing for the payment by the bank was only a means of enforcing payment from the shareholder, the same as any other claim might have been enforced through process of garnishment or other legal proceeding; that the mode adopted by the state legislature was substantially the same as that adopted by congress itself in collecting its tax upon dividends and on the income arising from bonds of corporations, and in fact the common if not the only mode of collecting the tax from the shareholders of corporations in many of the states. It was therefore held that this method adopted by the state of Kentucky for enforcing payment of the tax was in no sense an interference with the regulation or control of the management or business of the bank or of any act authorized by congress to be done by its officers or agents. It is perfectly manifest, we think, that the questions involved are not analogous to those here; and that the language of the opinion must be limited to the questions involved and decided, and not extended to others not in the case.

As we have already said, it is only the acts of an officer of a na-

tional bank, in the performance of its ordinary business as authorized by law of congress, with which we have to deal in this case, and not the rights of the bank under any contracts made by such an officer. For instance, an agent of the United States is duly authorized to purchase supplies for the army, or property for any other purpose. It seems clear that the agent could not be fined or in any manner interfered with by the state in so doing, though the property so purchased by him would be subject to prior liens or defects in title or other infirmities the same as though purchased by or for a private individual; and the rights of the government in and to such property would depend upon the general principles of law applicable thereto, the same as would the rights of an individual; and in this respect the rights acquired under such acts of the agent might be subject to local laws, while the act of the agent in so purchasing could not be. When, therefore, it is said that the federal officer or agent is subject to the local law of the state "which affects his family, social relations, and property in common with all other citizens" it clearly means as it says, that he is so subject to, and affected by, such law in his private capacity, and not in an official capacity or as an agent of the United States in the discharge of his duties as such, nor as to his acts which may be done in his private capacity in pursuance of and as authorized by a law of the United States. That it is not intended to depart from the repeated decisions of the court in *McCullock* vs. *Maryland*, and other cases, holding that the operations or functions of national banks are exempt from state regulation and control except as may be directly permitted by congress is expressly stated in the opinion.

The law of Iowa under consideration is of an entirely different nature. It is not authorized by any law of congress; it does not and is not intended to operate upon or affect the private property of the bank, nor of an officer or agent of the bank, or such officer in his individual or private capacity; *does not make fraud an element of the offense;* but is intended to and does directly affect the operations of the bank by which it performs its functions as *expressly authorized by the laws of congress*, and upon the officers as such who perform such acts. Now the fact alone that the First National Bank of Decorah was permitted by the comptroller of the currency, acting under the law of congress, to remain open and continue its business in the usual manner, cannot under any view of the law be held to be an un-

lawful act on the part of the bank or its officers; certainly the National Bank Act nor the officers of the United States charged with its enforcement do not so recognize it; nor is there any authority for holding, so far as we can discover, that the fact alone that one continues in business in the usual manner, after becoming insolvent, is acting fraudulently even, much less criminally. On the contrary, wherever transactions by one so continuing in business have been held fraudulent, there has been some fact or circumstance proven which takes the transaction out of the usual or ordinary course of the business and shows a specific intent to perpetrate a fraud in committing such transaction. *Nichols* vs. *Pinner*, 18 N. Y., and *Smith* vs. *Smith Murphy Co.*, above; *Blow* vs. *Gage*, 44 Ill., at page 217; *Talcott* vs. *Henderson*, 31 Ohio St., 162; *People* vs. *Healy*, 128, Ill., 9. There is nothing of that kind shown here, nor could there be, and as we have seen, the supreme court of Iowa finds and holds that at the time the plaintiff in error received this money from John French the First National Bank of Decorah was open and conducting its business in the usual manner, and continued to do so for nearly three months thereafter. The bank then was certainly conducting its business legally under the law of congress with the assent and approval of the comptroller of the currency, and no officer of the state of Iowa could have prevented it from doing so, or from continuing to do so. It could only transact such business, however, through its officers or agents. Can such an officer or agent then be held guilty of a crime in doing that which it was lawful for the bank to do? It would seem not.

In behalf of the state the *License Cases*, 3 Wall., 387, and 5 Wall., 462, holding that the tax imposed by the United States upon distillers and liquor dealers, and other cases holding that an act may be an offense against both the United States and state laws and punished by both, were referred to in the supreme court of Iowa in support of the contention that it was competent for the Iowa legislature to enact the law in question. These cases are inapplicable and do not support such contention.

In *The License Cases* the internal revenue laws of 1862 and 1864 under which they arose contain this provision: "That no such license, if granted, shall be construed to authorize the commencement or continuation of any trade, business, occupation, or employment therein mentioned within any state or territory of the United States in which it is or shall be specifically prohibited

by the laws thereof, or in the violation of the laws of any state or territory." This provision is now included in Sec. 3243 Rev. Stat. U. S. The National Bank Act contains no such provision. These cases only hold that the taxes imposed under this law are in effect an occupation tax, and that there was no purpose on the part of congress to confer authority upon the persons holding the licenses to carry on the business upon which the tax is laid. Instead of sustaining the contention of appellee, they announce a rule directly opposite thereto. Thus, in 5 Wall., at page 470, the court, after holding as above stated, says: "It is not doubted " that where congress possesses constitutional power to regulate " trade or intercourse, it may regulate by means of licenses as " well as by other modes, and in case of such regulation the li- " cense will give to the licensee authority to do whatever is au- " thorized by its terms. * * All such licenses confer authority " and give rights to the licensee." As a corrollary it must follow that the licensees would be protected in whatever their licenses authorized them to do.

The cases upon the other point are equally inapplicable, for the United States has not made the act charged against the plaintiff in error an offense, but, as we have seen, has expressly authorized such act to be done by him.

2d. *Is this law of Iowa valid as being a proper exercise of the police power of the state, as held in State vs. Fields?*

This, or the taxing power of the state, is always invoked to sustain state legislation which infringes upon some law of congress or provision of the federal constitution; but without avail in this court. It was so invoked in all of the foregoing cited cases and others in this court, and the uniform holding has been that as to matters national in character, and which should be controlled by laws of uniform operation, no action by congress was necessary to prohibit the states from acting thereon; and as to matters of a local nature, or of which the states may have concurrent jurisdiction with the general government, if congress has legislated thereon then such legislation excludes any by the states with reference to such subject matter except as may be expressly permitted by congress. Thus,

In *Gibbons* vs. *Ogden*, 9 Wheat., 1, Chief Justice Marshall speaking for the court said: "Since, however, in exercising pow- " ers and regulating their own internal affairs whether trading

"or police the states may sometimes enact laws the validity of "which depends upon their interfering with and being contrary "to an act of congress the court will enter upon the inquiry "whether or not the laws of the state as expounded by its high- "est tribunal have in their application come into collision with "an act of congress and deprived a citizen of a right to which "that act entitles him. Should this collision exist, it will be "immaterial whether those laws were passed in virtue of a con- "current power in the state or in virtue of a power to regulate "their domestic trade and police. In either case the act of the "states must yield to the law of congress."

In *Crandall* vs. *Nevada*, 6 Wall., 42, it was sought to uphold the statute there involved upon the ground that it was one within the taxing power of the state, the greatest of all the sovereign powers. In holding the act void, the court at page 44 says: "The question of the taxing power of the states as affecting the "functions of the federal government has been repeatedly con- "strued by this court, and the right of the state in this mode to "impede or embarrass the constitutional operations of that gov- "ernment or the rights which citizens hold under it has been uni- "formly denied," citing *McCullock* vs. *Maryland*, 4 Wheat.; *Brown* vs. *Maryland*, and other cases. * * "In all these cases "the opponents of the taxes levied by the states were able to "place their opposition on no express provision of the statute ex- "cept in *Brown* vs. *Maryland*. In the other cases, and in that "also, the court distinctly placed the invalidity of the state laws "on the ground that they interfered with an authority of the fed- "eral government which was itself only to be sustained as ne- "cessary and proper to the exercise of some other power ex- "pressly granted."

In *Henderson* vs. *Mayor*, 92 U. S., 259, a statute of the state of New York was claimed to be within the rightful exercise of the police power of the state. In declaring this law to be void, the court at page 271 says: "This power, frequently referred to in "the decisions of this court, has been in general terms somewhat "loosely called the police power; it is not necessary for the cause "of this decision to attempt to define it more accurately than it "has been defined already, because whatever may be the nature "and extent of that power where not otherwise restricted, no "definition of it and no urgency for its use can authorize a state "to exercise it in regard to a subject matter which has been con-

" fided exclusively to the discretion of congress. Nothing is gain-
" ed in argument by calling it the police power. It is clear
" that when the statute of the state invades the domain of legis-
" lation which belongs exclusively to the congress of the United
" States it is void, no matter under what class of powers it may
" fall or how closely allied to powers said to belong to the state."

All of these cases show that state legislation which conflicts or in any manner interferes with a law of congress, or attempts to regulate or control rights or privileges granted thereby, is impotent, no matter under what power of the state it is claimed to have been enacted.

Congress has not provided a penalty of fine or imprisonment for the receipt of deposits by the bank, or its officers and employees, when it is insolvent, and it is believed that it purposely omitted doing so. It has, however, provided by sec.5209 of the Revised Statutes for the severe punishment of such acts of the officers and agents of the bank as may result *in* its insolvency; and by sections 5234-5239 for the consequences that shall result *from* such insolvency, viz.; that the comptroller of the currency shall take possession of the bank, deprive the owners thereof, wind up its affairs, and make ratable distribution of its assets, and for the dissolution by a federal court of the association. This is all that congress has so far deemed it expedient to enact. Now, if the law of Iowa shall be held to apply to such banks, who shall determine the condition of those doing business in Iowa and whether or not the comptroller of the currency may permit them to continue to do business? Shall it be the comptroller of the currency, from the reports of their condition made by their officers to and the examinations made by him as authorized and required by the laws of the United States, or a jury in a trial in a state court of an indictment against the bank or some officer thereof? There is certainly no other way in which it can be done under the authority of the state laws, for it must be conceded that the state officers charged with the supervision of banks doing business under state laws have no authority in the premises. Under the system of examinations and reports provided for and required by law, the comptroller of the currency is informed every two or three months, and oftener if he so requires, of the condition of the national banks; and from such reports and examinations he is enabled to determine whether or not he shall permit them to continue in

business, or close them and deny them that right. This discretion is undoubtedly given him under the law, and for an obvious purpose. He may believe that the condition of the bank is such that if allowed to continue in business no damage whatever will result to it or its patrons, while to close it would bring ruin upon the bank and disaster to its creditors. Is it permissible, then, for the state to say that the comptroller shall be deprived of this discretion; that it may authorize the district court to empanel a jury, or in any other manner to determine, whether the bank is insolvent and not entitled to continue its business, regardless of the discretion lodged with the comptroller to so permit? It is difficult to conceive of a procedure that would more effectually interfere with the management, operation and functions of a bank than this, or one that would be more disastrous to it as a going concern; practically suspend its operations during such time, and ultimately result in closing it. It is no answer to this to say that after the bank is adjudged insolvent by the comptroller and placed in the hands of a receiver, this can be done without interfering with its operations. The question is one of the power in the state to authorize it at all. If it can do so after the comptroller has adjudged the bank insolvent, it can do so before, and while the bank is a going concern; in fact the question of its solvency or insolvency must be determined as of the date of the deposit, which in this case was on August 21st, 1896, nearly three months before the bank was closed, and the act of the plaintiff in error is to be judged as of that date, and not at the time it was closed. If the state could not have made the investigation on August 21st, 1896, it could not do so subsequently; and the court, in *State* vs. *Fields*, expressly declined to hold that it could do so, and seemed to place its ruling upon the ground, in part at least, that by the demurrer insolvency was admitted, and that it was unnecessary to determine such question. What effect such admission had upon the ultimate holding of the court can only be determined from what is said in its opinion.

The purpose of congress was to establish a uniform system for the control and government of the business of national banks; but if one state may impose one condition, another may impose something else, and the rule of uniformity thus prescribed is completely abrogated; and the comptroller of the currency must take notice of all these different conditions, regulations and

prohibitions imposed by state laws and be governed by them in his supervision of national banks.

The right of a bank to accept deposits is essential to enable it to continue in business. No bank could successfully conduct a banking business for any length of time and supply the demands of commerce or the trading community in which it is located without such right, and the actual exercise thereof. *Osborne* vs. *Bank*, above. Congress well understood this, and when it conferred upon national banks this authority to receive deposits to an unlimited amount, it must have intended to permit them to exercise the right untrammeled by any action of the state, and subject only to such penalties as it has provided for acts that might impair the capital of the bank or result in its insolvency, and to such consequences as would result from insolvency. To deny to the bank the right to receive deposits is to deny to it the right to continue in business; to impose conditions thereon is to impose conditions upon its right to continue such business. As well might the state say that national banks shall not discount or negotiate promissory notes; buy bills of exchange or bullion; make loans upon personal security; or do any other act, for that matter, which the law of congress says it may do. No one would seriously contend that the state might do this; yet such a law would no more interfere with the functions of the bank, or more effectually prevent it from continuing its business than the law under consideration. Unless then it be conceded that the state may prevent national banks from continuing their business when they become insolvent or when their capital becomes impaired this law cannot be upheld. The law of congress and the certificate issued by the comptroller of the currency to the First National Bank of Decorah is a full grant of authority by the United States to the bank, and to this plaintiff in error as its president, to do that which the law authorizes, among other things being the right to receive this very deposit in question. It would be manifestly inconsistent and absurd for congress to thus permit the bank to continue its business and receive deposits, require it to pay taxes thereon to the United States, and then impose a penalty of fine or imprisoment upon its officers for doing that which it thus permits and exacts. It is therefore believed that congress purposely avoided enacting such absurdity into a law, and that it intended that the states should not do so.

Upon any view of the case, then, it would seem that it must be held that national banks are not permitted to be "organized and their business prosecuted for the purpose of private gain;" that the National Bank Act does authorize such banks to receive deposits while conducting their business in the usual and ordinary manner, without attempting to limit the amount or circumstances thereof except as provided in said act; that such legislation of congress excludes any by the states upon such subject matter; and that it is not therefore competent for the state to prohibit such banks or their officers from so receiving such deposits, or say that such an act, so done by them without any fraudulent intent or purpose, is a crime and shall be punished as such.

To the suggestion of Mr. Justice Rothrock in *State* vs. *Fields*, that congress could not have intended that national banks should be permitted to receive deposits when insolvent, and that the law of Iowa might well have been intended as an aid to the general government to maintain the credit of its national banks, we need only say that that is purely a legislative and not a judicial question. *Hadden* vs. *Collector*, 5 Wall., 107. When the line which marks the boundary between the powers of congress and those of the states is ascertained, the power of each must be restricted within its proper limits. If further legislation applicable to national banks is needed, congress alone has the power to enact it.

Sec. 5202 of the Rev. Stat., however, expressly gives to the bank authority to receive deposits in an unlimited amount, regardless of the capital of such bank.

3d. *Do sections 1884 and 1885 of the Code of Iowa unjustly discriminate against banks and their officers and agents, and deny to them the equal protection of the laws?*

This question was raised in the state courts by the motion to quash and the demurrer to the indictment, (Transcript, pages 2, 3, and 4); and their action in sustaining the validity of the law is the ground of the eighth assignment of error here. (Transcript, page 45).

The term "deposit" has a well recognized meaning when used in commercial and bank transactions. It is defined to be "A delivery of money to a bank, to be kept without reward, and returned on demand." *Webster's Dictionary; Anderson's Law Dictionary; Marine Bank* vs. *Fulton Bank*, 2 Wall., 256; *Phoe-*

nix Bank vs. *Risley*, 111 U. S., 126; *Curtis* vs. *Leavitt*, 15 N. Y., 166. It is undoubtedly so used in the National Bank Act.

True, this creates the relation of debtor and creditor between the bank and depositor, but it is a debt due for property received by the bank from the creditor, and to be returned on demand without compensation to or by the bank; a gratuitous bailment. It is this which gives it its character of a deposit. When by the terms of the contract between the parties such debt is not to be paid by the bank upon demand, but at a future time agreed upon between the parties, and interest is to be paid by the bank for the use of the money, it loses its character of a simple deposit and becomes one for an ordinary loan of money between the parties. Shanklin, J., in *Curtis* vs. *Leavitt*, above, at page 166. The contract of August 21st, 1896, between the First National Bank of Decorah and John French, is of the latter named character. (See this contract, *ante* page 6). In *Bean* vs. *Briggs*, 1 Iowa, 488, the supreme court of Iowa holds such a contract to be a negotiable promissory note, and the transaction evidenced thereby one for the loan of money; and the authorities generally so hold. In *State* vs. *Boomer*, 103 Iowa, 106, as well as in the present case, that court however holds the law of Iowa under consideration to be applicable to a transaction evidenced by such a promissory note.

Is it permissible, then, for the legislature of the state to say that a bank or person doing a banking business shall not borrow money in this way, when insolvent, to be paid with interest at a fixed time in the future, when it does not deny such right to other insolvent debtors? If so, then the moment the bank or such person becomes insolvent, as that term is construed by the supreme court of Iowa, no matter what its assets may be, or how certain it is that they are sufficient to ultimately pay all debts in full, it must suspend business and proceed to wind up its affairs. If the law applied only to simple deposits as that term is ordinarily understood, it might with some reason be said that it was a legitimate classification of persons conducting such business because of the nature thereof for the purpose of regulating and controlling it; but when it goes further and extends to contracts so made for a loan of money for a definite time, it ceases to be legitimate classification and becomes an arbitrary selection of such persons, and prohibits them when insolvent from making legitimate con-

tracts in the ordinary course of business for the borrowing of money to be paid at a future time upon a valid consideration agreed upon by the parties; while all others of the community may lawfully make such contracts, though in the same condition of insolvency. Persons conducting a banking business should no more be denied the right of private contract when insolvent than should other persons. The law in such event unjustly discriminates against banks and persons conducting a banking business; deprives them of the equal protection of the laws, and those doing business under the law of congress of rights and privileges granted thereby, in contravention of the fourteenth amendment to the federal constitution; and falls within the class of legislation condemned by this court in *Gulf C. & S. F. Ry. Co.* vs. *Ellis*, 165 U. S., 150, and the cases there cited. See also *State* vs. *Scougel*, 51 N. W. Rep., 858, (S. Dak.); and *Carr* vs. *State*, 106 Ala., 35; where similar statutes are held void because repugnant to the constitution of these states respectively.

It is believed that these sections of the law of Iowa are repugnant to the constitution and to a law of the United States, and void. The plaintiff in error has challenged their validity at every opportunity during the progress of this case against him; and he now asks of this court that the judgment of the supreme court of Iowa be reversed, that the cause be remanded to that court with directions to reverse the judgment of the district court of Iowa in and for Fayette county and to discharge him from the effect thereof.

Respectfully submitted,

H. T. REED, C. W. REED,
for the Plaintiff in Error.

APPENDIX A.

STATE OF IOWA, Appellant, vs. WILLIAM FIELDS.

(Supreme Court of Iowa. April 3, 1895).

(98 Iowa, 748.)

Appeal from district court, Buchanan county; John J. Ney, Judge.

The defendant was president of the First National Bank of Cedar Falls, in this state, and was indicted for receiving a deposit of money in said bank when he knew it was insolvent. There was a demurrer to the indictment, which was sustained, and the state appeals. Reversed.

G. W. Dawson, attorney, of Blackhawk county, and E. E. Hasner, attorney, of Buchanan county, for the state. Hemenway & Grundy, Mullan & Pickett, and Powers, Lacy & Brown, for appellee.

ROTHROCK, J. The indictment is founded on sections 1, 2, chapter 153, of the acts of the eighteenth general assemby of this state. Section 1 of said act is in these words: "That no bank, banking house, exchange broker, deposit office, or firm, company, corporation, or party engaged in the banking, broker's exchange, or deposit business shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes, or United States treasury notes or currency, or other notes, bills or drafts circulating as currency, when such bank, banking house, exchange broker or deposit office, firm or party is insolvent." Section 2 of the act provides that if any such bank, exchange broker, company, or corporation shall receive or accept on deposit any money when insolvent, any "officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby, any such deposits as aforesaid, shall be guilty of a felony." The punishment, upon the conviction, is imprisonment in the penitentiary for a term not exceeding ten years.

It is not necessary to set out the demurrer to the indictment. There are really but two questions presented for our consideration. One is that the statute under which the indictment was found is not applicable to officers of national banks. There is nothing in the act authorizing the conclusion that any banking institution is excluded from its operation. On the contrary, by

its language it includes all banks, whether organized under the laws of the state or the acts of congress.

2. The real question in the case is whether the statute above cited is an attempt to control and regulate the business operations of a national bank. It is contended in behalf of appellee that the state has no power to punish an officer of a national bank for receiving deposits when he knows that the bank is insolvent, because it is a direct interference, and an attempt to prescribe a condition upon which deposits may not be received. It is conceded that there is no act of congress prohibiting the receipt of deposits at any time before an insolvent bank is taken out of the control of its officers under the provisions of the federal statute. Under the act of congress of June 3, 1864, and amendments thereto, when a banking association has complied with the law, and received a certificate, it is authorized to commence a banking business under the regulations prescribed in sections 5190-5219 of the Revised Statutes of the United States, inclusive. And the seventh subdivision of section 5136 is in these words: "Seventh. To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money upon personal security; and by obtaining, issuing and circulating notes according to the provisions of the title." It has been several times held by the supreme court of the United States that a state cannot impose a tax upon national banks unless permitted to do so by act of congress. *McCullock* vs. *Maryland*, 4 Wheat., 435; *Brown* vs. *Maryland*, 12 Wheat., 449. And in the case of *Bank* vs. *Dearing*, 91 U. S., 29, it was held that a state had no power to provide a penalty against a national bank for taking usurious interest in excess of that prescribed by act of congress. It is contended by counsel for appellee that the statute under which this indictment was found is a direct interference with the right to receive deposits, and that, within the principle of the cases above cited, an officer of a bank, even though the institution is actually insolvent, cannot be punished under a state enactment for receiving deposits, knowing that his bank is insolvent. The argument, briefly stated, is that, if a state has the power to provide that a national bank shall not receive deposits

under one state of circumstances, it has the power to so provide under any other circumstances, as that it shall not take deposits unless it holds in its possession one-half of its deposits and capital as a reserve fund. We think the argument of counsel that the act in question is an attempt to regulate the business of the bank is not a proper construction of the law.

It is to be remembered that by the demurrer to the indictment the defendant admits that the bank was insolvent when he received the deposit, and that he knew it was insolvent at that time. The acts of congress provide no penalty for the fraudulent receiving of deposits, and the statute under consideration operates upon the person who commits the crime. And it is not a material question to determine whether it will be necessary to investigate the financial condition of the bank to prove that the bank was insolvent when the deposit was received. This statute is in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers. The mere fact that in violating the law of the state the defendant performed an act pertaining to his duty as an officer of the bank does not in any manner interfere with the proper discharge of any duty he owes to any power, state or federal. Surely, it was not intended by any act of congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons. National banks are organized and their business prosecuted for private gain, and we can conceive of no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking. Suppose that the deposit in this case had been for such an amount that the depositor thought it important to inquire of the president of the bank as to the condition of institution as to solvency, and had been answered that it had ample means and a large surplus, and on the faith of such representations the deposit was made, and within a few days thereafter its doors were closed, and such a condition of affairs disclosed as showed that the bank had been for a long time insolvent. What defense could be interposed to an indictment for obtaining money by false pretenses? The claim that the defendant was not liable to indictment and punishment because he was in the performance of a duty under the national banking law would meet with but slight consideration in any court. The supposed case is not in all particulars parallel with the one at bar, but they are in principle the same. The only difference is that in

the supposed case the affirmative representation of solvency is made, and in the case at bar the open bank, receiving and paying out money, is in effect a representation that it is a solvent institution. The question is important. National banks are located and doing business in every county in the state, and we are aware of no decision of any court, state or federal, which exempts their officers from the penalties which are prescribed by acts like that under consideration. And it surely should require most cogent reasons for the establishment of any such a rule. It would be a premium offered to officers of national banks for dishonest practices. In the case of *National Bank* vs. *Commonwealth*, 9 Wall., 353, it was held that a state had the power to tax the shares of a stockholder in a national bank. It is said in that case that the doctrine that a national bank cannot be subjected to a tax on its capital "has its foundation in the proposition that the right of taxation may be so used in such cases as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the states, and it certainly cannot be maintained that banks or other corporations or instrumentalities of the government are to be wholly withdrawn from the operation of state legislation. The most important agents of the federal government are its officers; but no one will contend that when a man becomes an officer of the government he ceases to be subject to the laws of the state. * * The limitation is that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers into an unauthorized and unjustifiable invasion of the rights of the states. The salary of a federal officer may not be taxed; he may be exempted from any personal services which interfere with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties; but he is subject to all of the laws of the state which affect his family or social relations or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by laws of the state than of the nation. * * It is only when the state law in-

capacitates the banks from discharging their duties to the government that it becomes unconstitutional." We have made this copious extract from the opinion in the cited case because its reasoning is peculiarly applicable to the question presented by this appeal. How it can be possible that the act punishing bank officers for receiving deposits when they know the bank is insolvent can be construed as incapacitating the bank from any duty to the government is more than we can understand. The act should rather be held to be an aid to the government in maintaining the credit and standing of national banks; being, as it is, a prohibition, under a heavy penalty, for any officer to dishonestly take the money of customers when he knows that the bank is insolvent. The judgment of the district court is reversed.

APPENDIX B.

Chapter 10, Title IX., of the Code provides for the organization and management of savings banks. It need not be specifically set out.

Chapter 11 provides for the organization of state banks, and so far as necessary to be noticed is as follows:

OF STATE BANKS.

Section 1861. Associations organized under the general incorporation laws of this state for transacting a banking business, buying or selling exchange, receiving deposits, discounting notes and bills, other than savings banks, shall be designated state banks, and shall have the word "state" incorporated in and made a part of the name of such corporation; and no such corporation shall be authorized to transact business unless the provisions of this code have been complied with. (21 G. A., ch. 72, §1).

Section 1862. No partnership, individual or unincorporated association engaged in buying or selling exchange, receiving deposits, discounting notes and bills, or other banking business, shall incorporate or embrace the word "state" in its name, but this section shall not apply to associations organized under the laws of the United States. (Same, §3).

Section 1863. State banks may be hereafter organized by not less than five persons of lawful age, who shall, prior to the commencement of business, sign and acknowledge articles of incorporation before some officer authorized to take acknowledgements of deeds. Such articles of incorporation shall state: (The requirements are specified in detail); and shall be filed and recorded, and notice of incorporation given, as provided by section 1842 of the code.

Section 1864. No state bank shall be organized under the provisions of this chapter with a less amount of paid up capital than fifty thousand dollars, except in cities or towns having a population not exceeding three thousand, where such * * capital shall be not less than twenty-five thousand dollars. * *

Section 1865. The capital of state banks hereafter organized shall be divided into shares of one hundred dollars each. * *

Section 1866. The business and property of each state bank shall be managed by a board of directors of not less than five, all of whom shall be shareholders.

Section 1867. All state banks located in cities and towns having a population of less than three thousand inhabitants shall at all times maintain a reserve of not less than ten per cent of their total deposits, and * * in cities and towns of more than three thousand * * of not less than fifteen per cent of their total deposits. * *

CHAPTER 12.—OF BANKS.

Section 1868. * *
Section 1869. * *
Section 1870. * *
Section 1871. * *

Section 1872. All savings and state banks shall make a full, clear and accurate statement of the condition of the bank, verified by the oath of the president, vice-president, cashier, or assistant cashier, and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors, which statement shall contain (a detailed statement of the assets and liabilities of the bank under proper headings, showing the nature thereof) and transmit the same to the auditor of state within ten days after request by him therefor. (15 G. A., ch. 60, §22).

Section 1873. The auditor of state may, at any time he may see proper, make or cause to be made an examination of any savings or state bank, or he shall call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information under the preceding section. * *

Section 1874. The auditor of state shall also have power to call for special reports from savings and state banks whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of their condition, which reports shall be verified and attested in the same manner as required in this chapter.

Section 1875. The auditor of state may appoint one or more bank examiners, to hold office at his pleasure, who shall give bond to the state, conditioned for the faithful discharge of their duties, in the sum of two thousand dollars, which shall be filed with and the sureties therein approved by said auditor. (23 G. A., ch. 50, §1).

Section 1876. * *

Section 1877. When it shall appear to the auditor of state that any savings or state bank has refused to pay its deposits in accordance with the terms on which such deposits were received, or has become insolvent, or that its capital has become impaired, or has violated the law, or is conducting its business in an unsafe manner; he shall, by an order addressed to such bank, direct a discontinuance of such illegal or unsafe practices, and require conformity with the law; (and authorizes the auditor of state to take possession of the bank, and make distribution of its assets, and wind up its affairs, under the direction of the court. (Same, §25).

Section 1878, provides that if the capital stock of any state or savings bank becomes impaired by losses or otherwise, the auditor of state may require an assessment upon the stockholders sufficient to repair the deficiency. (25 G. A., ch. 29, §1).

Section 1879 provides for the manner of the collection of such assessment. (Same, §2).

Section 1880. * *

Section 1881. It shall be the duty of the auditor of state to communicate to the governor in his biennial report a statement of the condition of every bank from which reports have been received for the preceding year. * * (15 G. A., ch. 60, §24).

Section 1882. * *

Section 1883. * *

Section 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in the banking, brokerage, exchange, or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks or drafts, or renew any certificate of deposit. (18 G. A., ch. 153, §1).

Section 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the peniten-

tiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. (Same, §2).

Section 1886. Any officer or officers whose duty it is to make statement of the condition of its bank, and make publication of same, who shall willfully neglect or refuse to perform such duties imposed upon them or either of them, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than three months nor more than three years in the penitentiary.

Section 1887. Any owner, director, officer, agent employe or clerk of any bank, who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the bank to other objects than those authorized by law, shall be punished by a fine not exceeding ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years, and be forever after barred from holding any office created by this chapter. (15 G. A., ch. 60, §26).

Section 1888. Any owner, director, officer, agent, employe or clerk of any bank, who is guilty of intentional fraud, or of deceiving the public or individuals in relation to the means or liabilities of such bank, or who aids, assists or consents to the payment of dividends which leave insufficient funds with which to meet the liabilities of the bank, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than one year, or both such fine and imprisonment, at the discretion of the court; and such act shall cause a forfeiture of all the privileges of said bank, and the court may proceed to close the same in the manner prescribed by law. (Same, §27).

Section 1889. The president and cashier of every savings and state bank shall cause to be kept at all times a full and correct list of the names and residences of the officers, directors, examining committee, and of all the stockholders in the bank, and the number of shares held by each, in the office where its business is transacted. * * A copy of such list, verified by the oath of the president or cashier, shall be transmitted to the auditor of state within ten days after each annual meeting. No corporation shall

engage in the banking business, receive deposits, and transact business generally done by banks, unless it is subject to and organized under the provisions of this title, or of the banking laws of the state heretofore existing, except that loan and trust companies may receive time deposits and issue drafts on their depositaries, but such companies shall be subject to examination, regulation and control by the auditor of state, like savings and state banks, and their stockholders shall be liable to the creditors of such companies as provided in section eighteen hundred and eighty-two of this chapter for stockholders in savings and state banks. Any corporation violating this section shall forfeit its charter at the suit of the attorney-general, and said corporation, its officers, directors and agents, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than two years in the penitentiary, or by both such fine and imprisonment, at the discretion of the court; provided that loan and trust companies organized under the general incorporation laws of this state, which were engaged in the banking business prior to the first day of January, 1886, and have continued therein since said date, may, by the proper additions to their articles of incorporation, become state banks within the provisions of this title, without incorporating the word "state" in the names of such corporations.

No. 92.

Reply Brf. of Reed for Pl'ff

Office Supreme Court U.S.
FILED
NOV 8 1902
JAMES H. McKENNEY,
Clerk.

Filed Nov. 8, 1902.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 92.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGUMENT IN REPLY FOR THE PLAINTIFF IN ERROR.

H. T. REED, C. W. REED, FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 92.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGUMENT IN REPLY FOR THE PLAINTIFF IN ERROR.

I.

Proper construction of the Iowa Law.

The plaintiff in error contends and assigns as error,

That the supreme court of Iowa erred in holding that sections 1884-1885 of the code of Iowa (1897) do in fact apply to national banks and to the plaintiff in error as an officer of such bank.

It is contended on the part of the defendant in error that where a state statute has been construed by the highest court of such state, such construction is conclusive upon the federal courts, and that inasmuch as the supreme court of Iowa holds that sections 1884 and 1885 of the code of that state were intended to and do in fact apply to national banks, their officers and agents, that this court is concluded by such holding, and is thereby precluded from placing its own independent construction upon these sections of the Iowa code.

The rule so invoked by the defendant in error is a familiar one, but we think it is not applicable to this case. It is applicable more particularly to statutes and decisions of a local nature which establish a rule of property within the state; but in all

cases where it is necessary to determine whether or not a right secured by the constitution or some law of the United States has been violated by a state statute or municipal ordinance, the supreme court of the United States will place its own independent construction upon such state law. Such seems to be the holding of this court.

Jefferson vs. *Skelly*, 1 Black., 436; *The Hoboken Bridge*, 1 Wall., 116; *Delmas* vs. *Ins. Co.*, 14 Wall., 661; *Butz* vs. *City of Muscatine*, 8 Wall., 575; *University* vs. *Illinois*, 99 U. S., 309; *Yick Wo* vs. *Hopkins*, 118 U. S. 356; *Scott* vs. *McNeal*, 154 U. S., 34.

In *Butz* vs. *City of Muscatine*, 8 Wall., 575, it is said: "In all "cases brought here under the 25th section of the Judiciary Act "this court has never hesitated to determine for itself the con- "struction and effect of any statute of a state brought under re- "view without reference to the previous adjudications of the "highest courts of the state upon the subject. In the opinion in "the case of *Jefferson Bank* vs. *Skelly*, it was well asked, Of "what value would the appellate power of this court be to the "party aggrieved if such were not the rule? In that case, and "in all the other cases brought here involving the same question, "an act of the legislature of Ohio was pronounced invalid and "the judgments of the supreme court of the state were reversed. "* * Where the settled decisions in relation to a statute local "in its character have become rules of property these remarks "have no application; in such cases this court will, as it always "has done, follow such adjudication. The cases of a different "character, involving state statutes in which the adjudications "of the state courts in relation to them have been departed "from by this court, extend in an unbroken series from an early "period after its organization to the present time."

In *Delmas* vs. *Ins. Co.*, 14 Wall., 661, Mr. Justice Miller speaking for this court said: "This court has always jealously assert- "ed the right, when the question before it was the impairing of "an obligation of a contract by state legislation, to ascer- "tain for itself whether there was a contract to be impaired. If "it was not so, the constitutional provision could always be "evaded by the state courts giving such construction to the con- "tract, or such decision concerning its validity, as to render the "power of this court of no avail in upholding it against un- "constitutional state legislation." The other cases are to the

same effect. It is true that in some of these cases the questions involved were the validity of contracts, and whether or not they were impaired by some state statute, but the provision of the federal constitution inhibiting the states from passing any law impairing the obligations of contracts is only one of the rights secured to the citizen against the action of the state. The principle is applicable alike to any right secured to the citizen by the constitution or any law of the United States. Thus in *Yick Wo* vs. *Hopkins*, 118 U. S., 356, this court placed its own construction upon a municipal ordinance of the city of San Francisco, which was construed by the state court, and under which the plaintiff in error had been sentenced to imprisonment. Mr. Justice Matthews speaking for this court says: "That (the con-"struction of the ordinance by the state court), however, does "not preclude this court from putting upon the ordinances of the "supervisors of the county and city of San Francisco an indepen-"dent construction; for the determination of the question whether "the proceedings under these ordinances and in enforcement "of them are in conflict with the constitution and laws of the "United States, necessarily involves the meaning of the ordinances, "which for that purpose we are required to ascertain and ad-"judge."

The court then proceeds to a consideration of the meaning of the ordinances and construes their real meaning to be different from that declared by the supreme court of California. Besides, when a national bank is organized and authorized to do a banking business under the National Bank Act, this act is then in the nature of contract with the bank authorizing it to do that which is thereby authorized. *Dartmouth College* vs. *Woodard*, 4 Wheat.

It seems apparent, then, that it is within the rightful province of this court to determine for itself whether or not sections 1884-1885 of the Code of Iowa (1897) were intended to and do in fact apply to national banks. Do they so apply?

When these sections were enacted many persons and private corporations were doing a banking business in Iowa, though not incorporated as banks under any law of the state, as well as banks so incorporated, and the national banks. This fact was well known to the general assembly of Iowa and it is believed that its purpose in enacting these sections was to make them applicable to such persons and private corporations as were conducting a banking business and the banking corporations unorganized un-

der the state laws, over all of which the state might exercise a supervisory control, and that it was not intended to make them apply to national banks, over which the state could not exercise any such control. It is clear that the other provisions of the Iowa banking law in force when these sections were enacted, and those enacted since they were, do not apply to national banks, their officers, and agents. It will be conceded we think that general words used in a statute should be held to apply only to matters upon which the legislature may rightfully legislate. If the general assembly should enact that no railway company or other common carrier should charge more than a specified rate for the transportation of persons and property and impose a penalty of fine and imprisonment upon any officer or agent of any such company who should do so, it would hardly be contended that such law would apply to interstate transporation, even though congress had passed no law in regard thereto, for such matter is within the exclusive control of congress. When congress enacts a law providing for the establishment of national banks and for their regulation and for supervisory control over them, it then occupies a field of legislation authorized by the constitution of the United States; and the provisions enacted by it for the supervision, control, and regulation of such banks is, and of necessity must be, within the exclusive control of congress under the repeated decisions of this court. Such legislation by congress evinces an intention upon its part that no other shall be applicable thereto. The general words, then, used in sections 1884-1885 of the Iowa code, descriptive of any bank, should be held to apply only to such banks, persons, or corporations doing a banking or deposit business in Iowa, as the state may rightfully regulate or impose the terms or conditions upon which they may do business within the state, and not to national banks over which it can rightfully exercise no such control.

While the supreme court of Iowa says in its decision of this case that it has no doubt that it was intended by the legislature that these sections should apply to national banks, it is not easy to believe that the legislature would undertake to impose a condition or restraint upon the right of a national bank to do business in the state, or to do that which congress has expressly authorized it to do, when it had no power or authority to determine whether the bank was complying with such conditions.

Certainly it will not be claimed that the state could lawfully provide for an examination into the affairs of a national bank, or require reports to be made by its officers or agents to some officer of the state in order that the state might determine whether or not it is insolvent or is conducting its business in accordance with state laws, or to prevent its doing business in the state. So long as the bank is a going concern there is absolutely no way in which the state may determine whether or not it is complying with its laws. Into such a field it is believed the legislature did not intend to enter, and it is apparent, we think, that under the decisions of this and other courts, cited in the other branch of our argument, that congress intended that the state should not enter. Such is the construction placed upon a statute identical with the Iowa law by the supreme court of Kansas; and of similar laws by the supreme courts of Michigan, Pennsylvania and Alabama, in the cases from these states cited in our original brief.

The very fact that the state courts may differ in their judgments as to the applicability of such laws to national banks, and the proper meaning thereof, is an added reason why the subject matter of the regulation or supervisory control and management of the business of such banks should be withdrawn from the operation of state laws; for it is apparent that the purpose of congress in enacting the national bank law was to establish a complete and uniform system for the control of such banks by which alone the officers of the government of the United States charged with their supervision and control should be ~~alone~~ governed. To subject them to the operation of state laws would certainly thwart this purpose. When it is remembered that criminal statutes are inelastic and cannot by construction be made to embrace cases not clearly within their letter and upon which the state may rightly legislate, it would seem that these sections of the Iowa code do not apply to national banks, their officers, or agents.

This question is so closely allied with that of the validity of the Iowa law, if it be held that the construction placed thereon by the supreme court of that state is conclusive upon this court, that much that is said upon that branch of the case may well be considered upon this, and we refer to what we have there said as also applicable in some measure at least to this question.

II.

If the Iowa law applies to national banks, is it valid?

1st. The learned attorney general of Iowa in affirming that it is, does so upon the sole ground, "That when a national bank becomes insolvent it has no legal right to longer continue its business or to receive deposits." In effect, that it must go into liquidation at once. (See his argument at page 29.)

It is believed that this proposition is not sound. Certainly the executive officers of the government charged with the enforcement of the National Bank Act do not so regard it. We have endeavored to show in our argument in chief that the comptroller of the currency is invested under that act with a discretion in regard to permitting a national bank to continue its business though in fact it may be insolvent. That act provides, in addition to the sections of the Revised Statutes already referred to by us in substance, as follows:

Sec. 5191. Whenever the lawful money of any association shall fall below the amount required by law to be kept on hand by it, and it fails to make good such reserve after thirty days notice by the comptroller to do so, the comptroller may, with the concurrence of the secretary of the treasury, appoint a receiver, to wind up the business of the association.

Sec. 5205. If any association shall fail to make good any impairment of its capital stock, caused by losses or otherwise, within three months after notice from the comptroller of the currency to do so, a receiver may be appointed by him to close its business.

Sec. 5228. After default on the part of the association to pay any of its circulating notes has been ascertained by the comptroller of the currency and notice thereof has been given by him to the association, it shall not be lawful for the association to pay out any of its notes, discount any notes or bills of exchange, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it and to deliver special deposits. (This is the only provision of the act that makes it unlawful for the bank to transact the business which it is authorized by law to do, before it is taken possession of by the comptroller of the currency. And this clearly recognizes the lawful right of the bank to continue its business until the comptroller takes action to prevent it.)

Sec. 5239. If the directors of any national bank knowingly violate, or knowingly permit any of its officers or agents to violate any of the provisions of the National Bank Act, all rights, privileges, and franchises of the association shall be forfeited. Such violation, however, shall be declared and adjudged by a proper circuit, district, or territorial court of the United States in a suit brought for that purpose by the comptroller of the currency in his own name, before the association shall be declared dissolved.

The act of June 30, 1876, increases the grounds upon which the comptroller may close the bank and put it in the hands of a receiver. The entire law, however, recognizes the right of the association to lawfully continue to transact the business authorized by it until the comptroller of the currency takes action to prevent it, subject only to such penalties, or liability to forfeiture of its franchises, as are provided by the act itself.

In *National Bank* vs. *Matthews*, 98 U. S., 621, it is held that if a national bank or its officers should transcend any of the powers granted it by the National Bank Act, only the government of the United States can take advantage of this in a direct action to forfeit its franchise; that a third party cannot interfere or take advantage of the forbidden act; that the impending danger of a judgment of ouster and dissolution was the check and none other contemplated by congress. This was a case where the bank had taken title to real estate in violation of the provisions of the National Bank Act. The ruling is followed in *National Bank* vs. *Whitney*, 103 U. S. 99, and *Reynolds* vs. *Bank*, 112 U. S., 404.

That the National Bank Act invests the comptroller of the currency with a discretion as to whether he shall permit a bank organized under its provisions to continue its business, or to close it and put it in process of liquidation seems plain. Such is the construction uniformly placed upon the act by the treasury department; for in times of financial distress that department always rendered all possible aid within its power to relieve the banks from distress or embarrassment so that they may continue their business, rather than to close them under the provisions of the law. This is a contemporaneous construction of the act by the executive department of the government that would be entitled to much weight in determining the proper construction of the law if there was any doubt as to what that construction should be.

Even as we write this paper the daily press informs us that the reports of the national banks in the city of New York to the comptroller of the currency, in response to the recent call of that officer therefor, show the lawful cash reserve of such banks to be far below the legal limit. If called upon to meet their obligations they could not do so, and under the theory of counsel for defendant in error, they must close their doors. In his statement to the banks regarding this reserve, the secretary of the treasury, however, says: "The law lays down the rule that the reserve " shall be maintained, but lodges a discretion with the comptrol- " ler and with the secretary of the treasury as to the enforcement " of the rule. You are therefore notified that the rule will not be " enforced so far as it relates to government deposits secured by " government bonds."

Now, if the state may say that national banks shall not do a part of their business when in a certain condition, it may extend its prohibition to their entire business. It may say that they shall not receive deposits or transact any other business which the law of congress says they may do, when their lawful cash reserve is below a certain limit; it may define insolvency and say that unless the banks shall at all times keep on hand seventy-five per cent (or more) in cash of all their obligations they shall be deemed to be insolvent and shall not only not receive deposits but shall not transact any other business; and under the theory of the attorney general must stop all business. It seems plain that this would be a manifest interference with the right of the banks to transact the business authorized by the law of congress; and with the discretion of the executive officers of the government charged with the supervision and control of their management, to permit them to continue such business, if they shall be so advised from the knowledge of their condition, ascertained by them in the manner required by law; and with the efficiency of the banks in attaining the objects of their creation.

In *Mc Donald* vs. *Chemical National Bank*, 174 U. S., 610, this court recognizes the right of a national bank to continue its business until closed by the comptroller of the currency, as authorized by the National Bank Act. A question arose between the creditors of a national bank as to the validity of its transactions in the ordinary course of its business when it was in fact insolvent, and so known to be by its managing officers, but before the comptroller of the currency had taken

possession of it. Mr. Justice Shiras speaking for the court says: "It is a matter of common knowledge that banks and other cor- "porations continue in many instances to do their regular and "ordinary business for long periods, though in a condition of ac- "tual insolvency as disclosed by subsequent events. * * There "is often the hope that if only the credit of the bank can be kept "up by continuing its ordinary business, and by avoiding any "act of insolvency, affairs may take a favorable turn and thus "suspension of payment and business be avoided. In the pres- "ent instance * * there is no evidence that up to the closing "hours of Jan. 21, 1893, (the day that the bank was closed by "the comptroller of the currency), the Capital National Bank "had failed to pay any depositor on demand, or had not met at "maturity, all its obligations. The evidence fails to disclose any "intention on the part of its officers to presently suspend busi- "ness. * * It may be that those of its officers who knew its "real condition must have dreaded an ultimate catastrophe, * * "but there is nothing to justify the inference that the particular "payments in question were made in contemplation of insolvency. "* * Indeed, it is stipulated that the Capital National Bank "continued to transact its usual and ordinary business up to the "close of banking hours on Jan. 21, 1893."

The holding is in effect that the bank had the legal right to continue its business in the usual manner though actually insolvent and known to be so by its managing officers, until the comptroller of the currency should take possession of its assets and place them in the hands of a receiver.

Counsel for the defendant in error cites certain decisions of this and other courts as supporting his contention; and as a basis for their supposed application to this case says: "In the case at bar the bank had been hopelessly insolvent for years. Its insolvency was known to the plaintiff in error during all of that time; it was tottering to a fall, and yet its doors were kept open, its true condition fraudulently concealed," etc.

The record shows, and the supreme court of Iowa in its opinion, says, "That on August 26th (21), 1896, the First National Bank of Decorah was then open and transacting business in the usual manner, and continued to do so until Nov. 10, 1896, when it was found to be insolvent and put in the hands of a receiver," etc.

It is true that the finding of the jury establishes (in case the

state court has the right to inquire into and determine the question) that the bank was insolvent on August 21, 1896, and that the plaintiff in error then so knew. Stripped of its adjectives this is all that the indictment charges; all that was necessary to be charged under the Iowa law; and all that the verdict of the jury implies. The testimony adduced upon the trial shows that the bank always made the reports of its condition to the comptroller of the currency as required by law, and whenever called upon therefor; that it was examined by the comptroller through his examiners twice a year; that up to the time it was closed on Nov. 10, 1896, it was able to meet and had always met all its obligations as they were presented in the ordinary course of its business, and had never refused to do so. (Transcript of record, pages 17-18). The actual condition of the bank then was made known to the comptroller of the currency during all of this time, and there is an entire absence of evidence tending to show any concealment of its condition from him or any one appointed by him to examine into its affairs or from any one else. Such is the record in this case.

As we read and understand them, the authorities cited by defendant in error hold, in effect, that when a bank is known by its managers to be insolvent, and unable to longer continue its business, but does so continue, and otherwise represents that it is solvent, and thereby induces one on the eve of suspension, who is ignorant of its condition, to make a deposit with it, such facts are sufficient to prevent the title to the deposit from passing to the bank, or constitute such fraud as will entitle the depositor to rescind his contract with the bank and recover from it or its assignee or receiver the deposit or its proceeds whenever he can identify the same. With such decisions we need have no controversy. A review of them will disclose, we think, that they do not meet any question we have in this case.

We said at the outset of our argument in chief that the distinction between the right of a national bank officer to transact its usual and ordinary business as authorized by the law of congress, untrammeled by the criminal laws of the state, and the rights of the bank under a contract made by its officers, must be kept in mind. That it was with the former named question only that we had to deal in this case. It is to the latter named question only that the authorities cited by counsel for the defendant in error apply.

St. Louis & San Francisco Ry. Co. vs. *Johnson*, 133 U. S., 566, is a fair type of the cases cited by the defendant in error. In that case it appears that the railway company had made its sight draft upon its debtor, who resided in Boston, and deposited the draft with the Marine National Bank in New York for collection, and this bank entered the amount of the draft upon its books to the credit of the railway company and forwarded the draft to its correspondent in Boston for collection. Before the draft was collected by its correspondent bank the Marine Bank suspended business and did not again open its doors; in fact it was insolvent and on the eve of closing its doors when the deposit was made with it, and its managing officers so knew. The railway company had been doing business with the bank for a long time, and it was alleged by it that the bank by keeping its doors open, continuing in business, and otherwise, represented to the railway company that it was solvent and thereby induced it to make the deposit of the draft with the bank. Held; that the railway company under such circumstances never parted with its title to the draft or its proceeds and that neither the Marine Bank nor its receiver was entitled to hold the same as against the railway company.

In *Craigie* vs. *Hadley*, 99 N. Y., cited in the above named case, checks were deposited with the bank only a few hours before it suspended; its drafts had been protested the day before; the bank was in a condition of open insolvency, and it was known by its managing officers that it could not longer continue in business. Held, that this constituted such fraud upon the part of its officers in receiving the deposit as would entitle the depositor to rescind his contract with the bank and recover the proceeds of the checks from its assignee or receiver.

In *American Trust and Savings Bank* vs. *Manufacturing Co.*, 150 Ills., 340, the deposit was of a check or draft for collection. The bank suspended before it was collected and payment of the check was stopped by the drawer. Held, that the depositor had a right to do this and that the assignee of the bank was not entitled to the check or its proceeds as against the drawer.

In *Bank* vs. *Strauss*, 66 Miss., 479, (14 Am. St. Rep., 579), deposit was also made of a draft which the receiving bank forwarded to its correspondent, the Meriden Bank, for collection and credit to its account. The receiving bank suspended business before the draft was paid; one of its managers had abscond-

ed before the deposit was made. The drawer stopped payment of the draft and it went to protest. The Meriden Bank claimed the proceeds of the draft as against the drawer to apply on its account with the receiving bank. Held, that it was not entitled to the same as against the drawer of the draft.

It will thus be seen that the sole question decided in each case is, that the depositor of checks or drafts in a bank which is hopelessly insolvent, and which suspends business immediately following the deposit, and before the checks or drafts are collected, prevents the title to the deposit from passing to the bank, or amounts to such fraud as will authorize the depositor to rescind his contract and recover the checks or the proceeds thereof from the receiving bank or its assignee whenever he can identify the same. The rule no doubt would under the same conditions apply to a deposit of money, subject only to the greater difficulty of identifying it. In some of the opinions language is used indicating that it is fraudulent for a bank, in connection with other facts of a fraudulent nature, to continue its business when insolvent; but the ultimate decisions and judgments of the courts must be limited to the issues and facts in each case. This rule has been expressed by this court as follows: "It is trite to say that general " principles announced by courts which are perfectly sound ex- " pressions of the law under the facts of a particular case, may " be wholly inapplicable in another and different case." *Parsons* vs. *District of Columbia*, 170 U. S. at page 51. Under these facts as disclosed by the record in the foregoing cases, the question alone was as to the title or right to the deposit in each case, as between the bank or its assignee or receiver and the depositor. It is plain that no question we have in this case was involved in any of them, and is not decided.

That insolvency alone does not work a dissolution of the bank or other corporation, or prevent it from lawfully continuing its business is a proposition in support of which it is deemed unnecessary to cite authorities. For whether or not a national bank may continue its business when insolvent, or must at once suspend and go into liquidation, is a question that must be determined, as we view it, from the provisions of the law of congress under which it is created. The invariable rule however is, that a bank or other corporation is not prevented from continuing its business in the absence of a statute simply because it is insolvent, but it may continue its business in the usual manner until

it is prevented from doing so by the proper tribunal, and its affairs put in process of liquidation as authorized by the law creating it. And such is the rule under the National Bank Act as held in effect in *McDonald* vs. *Chemical National Bank*, 174 U.S., above.

In *Sutton Manufacturing Co.* vs. *Hutchinson*, 63 Fed. Rep., at page 501, Mr. Justice Harlan speaking for the court of appeals, seventh circuit, says: "A corporation is not required by any duty "it owes to creditors to suspend operation the moment it becomes "financially embarrassed, or because it may be doubtful whether "the objects of its creation can be attained by further effort on "its part. It is in the line of right and duty, when attempting "in good faith by the exercise of its lawful powers, and by the "use of all legitimate means to preserve its active existence, and "thereby accomplish the objects for which it was created." See also *Coler* vs. *Allen*, 114 Federal Rep., 609, (C. C. A., 9th circuit); *American Exchange National Bank* vs. *Ward*, 111 Fed. Rep., 782, (C. C. A , 8th circuit).

In *McClellan* vs. *Chipman*, 164 U. S., 356, cited in behalf of the defendant in error, the insolvent law of Massachusetts was involved. That law provides that any conveyance or transfer of his property by an insolvent debtor with intent to give a preference to any creditor, within six months previous to the filing of a petition to declare him insolvent, is void. A national bank in that state had taken a conveyance of real estate to itself from its insolvent debtor within such six months, with reasonable cause to believe him to be insolvent, and contended that the law of Massachusetts did not apply to such transactions because the National Bank Act authorized it to take a conveyance of property from its debtor to secure an indebtedness to it from such debtor. Held; that such law did not conflict with the law of congress which authorized national banks to take real estate or other security from its debtors; that the law in effect impressed upon the property of insolvent debtors in that state owned by them within such six months a lien in favor of all their creditors, and incapacitated such debtor from displacing such lien by any conveyance or transfer of his property within such time with intent to prefer one creditor over another, that the national bank in taking such conveyance of such property only acquired the same right therein that an individual or other creditor would have acquired under the same circumstances. The law did not attempt to incapacitate the bank from doing any act authorized

by the law of congress, nor did it attempt to impose any condition upon, or restriction of, its right to do so.

The distinction between the law of Massachusetts there construed and the Iowa law under consideration here is plain. The latter operates alone upon the bank and its officers or agents, and declares that to be a crime which the law of congress says they may do. The former operates upon the property of the insolvent debtor in that state, and incapacitates him from giving a preference in or to such property in favor of one creditor over others, and declares that any preferences attempted to be so given shall be void. The determination of a bank's rights to property under such a contract according to the local or other law applicable thereto in no way conflicts with the law of congress authorizing the bank to make such contract. Had the law of Massachusetts undertaken to declare the acts of the officers of the bank in making such contract a crime, or to have prohibited their so doing, it would hardly be contended that such a law did not conflict with the law of congress which authorizes the bank to make such a contract.

The distinction between this law of Massachusetts and that of New York involved in *Davis* vs. *Elmira Savings Bank*, 161 U. S., is very clearly pointed out in the opinion of the court A law of New York declared a preference in favor of savings banks organized under the law of that state over other creditors in the assets of any insolvent bank or trust company there doing businesss. Under this law the Elmira Savings Bank claimed a preference over other creditors in the assets of an insolvent national bank in the hands of a receiver appointed by the comptroller of the currency. This court held in that case that the New York law which declared such preference was repugnant to the law of congress which requires the assets of an insolvent national bank to be ratably distributed among its creditors. The court says: "It is clear these two statutes "cover the same subject matter. Both relate to insolvent na- "tional banks; both ordain that the right of preference on one "side, and the duty of ratable distribution on the other, shall "only result from insolvency. * * It is equally certain that "both relate to the same duty on the part of the officers of the "insolvent national bank. * * To hold that the state statute "is operative is to decide that it overrides the plain text of the "act of congress." This declares the principle that we maintain

is applicable to our case. The law of congress says that the national bank may continue its business, receive deposits and do the other acts authorized by it, subject only to such conditions and restrictions as are prescribed by the act itself. The law of Iowa says it shall not do a part of such business except upon certain other conditions which it seeks to impose, viz., that it must be solvent within the meaning of that term as defined by the Iowa courts. Both of these laws cover the same subject matter, and one or the other of them must yield, for they are in direct conflict.

In *Plumley* vs. *Massachusetts*, a law of Massachusetts also was involved, which prohibits the manufacture or sale within that state of oleomargarine made or colored in imitation of pure yellow butter, and imposes certain penalties for so doing. Plumley was the agent in Massachusetts of citizens in Illinois who were engaged in the manufacture of oleomargarine so made and colored which they shipped to Plumley in the original packages to be sold in Massachusetts; and he was convicted in that state for selling such articles in violation of its law. From such conviction he sought relief upon the ground that the law of Massachusetts was repugnant to the commerce clause of the federal constitution and the act of congress of Aug. 2, 1886, regulating the manufacture and sale of oleomargarine. The majority of this court held the state law to be valid solely upon the ground that it was one to prevent frauds in the manufacture or sale of an article made in imitation of and to represent some other article, whereby consumers were, or might be, deceived into purchasing an article of food which was not in fact what they supposed it to be; that the act of congress referred to was not enacted as a regulation of commerce; and that the question in the case was *unaffected by any act of congress or by any regulation made in pursuance thereof*; that the commerce clause of the federal constitution did not prevent the several states from punishing false pretenses and frauds committed and perpetrated in the sale of property in such state simply because it was shipped there from another state and sold by the shipper in the original package for something other than what it really was. This is the gist of the decision and all thereof. In the course of the opinion Mr. Justice Harlan says: "It (the law of Massachusetts) compels the sale of "oleomargarine for what it really is by preventing its sale for "what it is not. * * Now the real object of coloring oleomargar-

"ine to make it look like butter is to make it appear to be what "it is not, and thus to induce * * purchasers to buy it as and "for butter produced from pure milk and cream." The distinction between the law there construed and one which declares it to be a crime to do only that which a law of congress authorizes, is made clear in the later case of *Schoellenberger* vs. *Pennsylvania*, 171 U. S., 1, referred to at page 29 of our argument in chief.

If the plaintiff in error in this case had made any false statements or representations whatever, or used any trick or artifice of any kind to induce John French to make the contract of August 21st, 1896, and Mr. French was induced thereby to make the same, there might be some reason in saying that plaintiff in error had gone beyond the scope of his authority as authorized by the National Bank act, and for such fraudulent representations he would not be entitled to the protection of the law of congress. See however *In re Waite*, 81 Fed. Rep., above. Stripped of its adjectives nothing of this kind was charged in the indictment against him, nor required to be under the law of Iowa; nor was there any attempt to show it upon the trial; nor could it be shown, for the plaintiff in error had done nothing of the kind. The Iowa statute applies to, and the plaintiff in error stands convicted solely for, an act which he was authorized by the law of congress to perform.

2d. *Has congress covered the field of legislation entered by the Iowa law?*

It is next said that congress has not covered this field of legislation because it has not made the receipt of deposits by a national bank a crime; therefore it is competent for the state to do so. The fallacy of this argument is in the assumption that congress has not covered this field of legislation.

We have endeavored to show that inasmuch as congress has provided for the establishment of a national bank it has exercised a power granted to it exclusively under the federal constitution and that the law enacted by it evinces its intention that there shall be no other law to act upon such subject matter, and especially upon the right of the bank to transact the business authorized by congress. The authorities cited by us clearly establish this rule.

In *Leisy* vs. *Hardin*, 135, U. S., so cited, Mr. Chief Justice Fuller speaking for a majority of the court says: "Where the

"subject matter requires a uniform system as between the states, "the power controlling it is necessarily exclusive in congress and "cannot be encroached upon by the states. * * It is easy to "see that congress may assert an authority under one of the "granted powers, which would exclude the exercise by the states "upon the same subject of a different but similar power, between "which and that possessed by the general government no inher- "ent repugnancy existed. Whenever, however, a particular "power of the general government is one which must necessar- "ily be exercised by it, and congress remains silent, this is not "only not a concession that the powers reserved by the states "may be exerted as if the specific power had not been elsewhere "reposed, but on the contrary, the only legitimate conclusion is, "that the general government intended that that power should "not be affirmatively exercised; and the action of the states can- "not be permitted to effect that which would be incompatible "with that intention."

That the power to establish a national bank belongs exclusively to congress cannot be gainsaid at this date. That such banks should be, and were intended by congress to be, governed by a law of uniform operation so far as the exercise of the authority granted to them and the management, regulation and control of their business by the general government is concerned, cannot be doubted. This being so, it must follow that the states cannot be permitted to interfere with the bank in the exercise of such powers, nor with the general government in the supervision and control of their management. The legislation of congress upon such matters precludes any by the states thereon.

3d. *The same act may be an offence against both the state and the United States.*

Cross vs. *North Carolina*, 132 U. S., 139, is cited by the defendant in error in support of this proposition. In this case an indictment in two counts was found in the proper state court against Cross, charging him with the forging of a certain promissory note payable to and at a national bank, and of certain endorsements upon said note, with intent to defraud, in violation of the statute of North Carolina. Also with forging such note and endorsements with intent to defraud a national bank. The defendant filed a plea in abatement in which it was alleged that the for-

gery was committed for the purpose of being used in making certain false and fraudulent entries upon the books of a national bank with intent to deceive the national bank examiners in making an examination of said bank, in violation of section 5209 of the revised statutes of the United States. The plea was overruled. A *nolle prosequi* was then entered upon the counts of the indictment charging the intent to defraud the national bank examiners. Upon a trial Cross was found guilty of forgery. Held; that there was no error in overruling the plea in abatement; nor in his conviction of the crime of forgery under the statute of North Carolina; that a crime against the state could not be obliterated or excused by committing or attempting to commit another and distinct crime against the United States. In the course of its opinion the court refers, *arguendo*, to the rule that the same act or series of acts may be an offense against the state and also against the United States. The inapplicability of this principle to any question we have in this case seems apparent, for the United States has not made the acts charged against the plaintiff in error in this case a crime, but has expressly authorized such act. The other cases cited upon this point need not be further considered, for it is believed the principle has no application to our case.

People vs. *Fonda*, 62 Mich.; *State* vs. *Mencke*, 56 Kas.; and *Commonwealth* vs. *Ketner*, 92 Pa. St., are apparently conceded to be against the contention of the counsel for defendant in error; but it is intimated that the first of these cases is erroneously decided, and said that the Ketner case appears to have been overruled by the later case of *Commonwealth* vs. *Luberg*, 94 Pa. St., 85. As to the criticism of the Michigan case we can make no reply. As to *Commonwealth* vs. *Ketner*, counsel is in error in supposing it to be overruled by the Luberg case. It is referred to in that case as *Commonwealth* vs. *Torrey*, the correct title being *Commonwealth ex rel. Torrey* vs. *Ketner*; and also in *Allen* vs. *Carter*, 119 Pa. St., 192, and approved in both cases.

Commonwealth vs. *Tenney*, 97 Mass., 50, was not the case of the embezzelment of the property of the bank, as stated by counsel. The property was that of one Purple, deposited by him with the bank as a special deposit, and remained his property. It was stolen by a clerk in the bank and converted to his own use. It is apparent the case is not in conflict with any we have cited.

State vs. *Bardwell*, 72 Miss., 535, is also cited. This case

stands alone upon the question we are considering, and its value as a precedent may well be questioned. There was an attempt to indict the defendant, a cashier of a national bank, under a statute of Mississippi prohibiting the acceptance of a deposit by any bank when it was insolvent. A demurrer to the indictment, based upon several grounds, was interposed and was sustained, but upon which ground does hot appear. On appeal by the state it was held by the supreme court that the indictment was insufficient to charge any offense under the statute, even though defendant had not been an officer of a national bank. This, it would seem, was an end of the controversy, for if the indictment failed to allege any facts constituting an offense there was nothing further to be considered. After so disposing of the case, however, the opinion proceeds to consider the question as to whether or not a national bank officer might be amenable to the state statute if the indictment had been sufficient to charge an offence thereunder. Upon this point the opinion of the court seems to be *dictum* only. The opinion makes no reference to any federal decision except the counterfeit cases, but at the close it apparently recognizes the rule that as to matters within the power of congress to legislate upon, if congress does so legislate, this excludes any legislation by the state upon the same subject matter.

It is said that the cases cited by us are inapplicable, and that in *Cunningham* vs. *Neagle*; *Ohio* vs. *Thomas*; and *In re Waite* the parties proceeded against were officers of the United States, and each charged with the performance of a particular duty under its laws, and that the acts charged against them were done in the performance of such duties. We think counsel misapprehends the grounds of the decisions and the principles declared in these cases. It is true that Neagle was in the performance of a duty specially enjoined upon him by the orders of a United States marshal. The grounds of the decision, however, are that he was acting in pursuance of an authority or law of the United States. But neither Thomas nor Waite was charged by any law or executive order with doing the acts which were charged against them respectively as being in violation of the state law. In the *Thomas* case it is held that it may be conceded that the act done by him was not necessary for the discharge of any duty enjoined upon him in the management of the affairs of the soldiers' home; and in the *Waite* case it was found by the state court that the act done by him

was outside of any duty enjoined upon him by any law of the United States or order of the pension bureau, and the opinion of the United States court proceeds upon the theory that if Waite had in fact overstepped his duties as an agent of the United States, the general government alone could call him to account therefor. It is apparent that the ground of the decision in each of these cases is that the acts charged against the defendants therein were acts authorized by a law of congress, and that therefore it was beyond the power of the state to declare such acts to be crimes against its laws.

There was no law of the United States, however, charging McCulloch with the duty of not using the stamped paper of Maryland in issuing the notes of his bank; nor Brown with the duty of importing his package of goods from a foreign country and selling the same; nor Prigg with the duty of seizing the person of Margaret Morgan and taking her back to Maryland; nor Leisy & Co., or Rhodes with the duty of bringing intoxicating liquors into the state of Iowa from some other state. In each of these cases the person simply exercised a right authorized by the constitution or some law of the United States.

In the strict sense, an officer of a national bank may not be an officer of the United States; but the bank is an instrumentality or agency of the United States, and he as an officer of such bank may lawfully do whatever the bank is authorized to do by the law creating it.

III.

Is the Iowa law a valid exercise of the police power of the state?

If it in fact impinges upon a law of congress it is of course void, no matter under what power of the state it is claimed to have been enacted.

In *Lawton* vs. *State*, 152 U. S., 133, Mr. Justice Brown speaking for a majority of the court says: "It (the police power) is "universally conceded to include everything essential to the pub- "lic safety, health, and morals, and to justify the destruction or "abatement by summary proceedings of whatever may be re- "garded as a public nuisance. * * To justify the state in thus "interposing its authority in behalf of the public it must appear; "First, that the interest of the public generally, as distinguished "from a particular class, requires such interference; and, Second,

" that the means are reasonably necessary for the accomplish-
" ment of this purpose, and not unduly oppressive upon individu-
" als. The legislature may not under the guise of protecting the
" public interest arbitrarily interfere with private business, or
" impose unusual or unnecessary restrictions upon lawful occupa-
" tions." After citing instances in which it was held that the acts of the state were invalid under this rule, he says: "In all " these cases the acts were held to be invalid as involving an un-" necessary invasion of private rights and a practical inhibition " of certain occupations, harmless in themselves, and which " might be carried on without detriment to the public interest."

In *Barbier* vs. *Connolly*, 113 U. S., 27, an ordinance of the city and county of San Francisco prohibiting laundry work within certain prescribed territory of a large city between 10 o'clock p. m. and 6 o'clock a. m., was upheld as a valid exercise of the police power in that it was a reasonable regulation for the protection of property against fire in a thickly settled portion of the city composed largely of wooden buildings. The prohibition extended to all persons conducting such business and not to any particular class so conducting it. In other words, it forbade the doing of such work by any one during such hours. Mr. Justice Field in speaking for the court says: "The fourteenth amend-" ment in declaring that no state * * shall deny to any person " within its jurisdiction the equal protection of the laws undoubt-" edly intended * * that no impediment should be imposed " on the pursuits of any one, except as apply to the same pur-" suits by all others under like circumstances and that no greater " burden should be laid upon one than are laid upon others in the " same calling and condition. * * "

It is true that the state may classify certain kinds of business for the purpose of regulating or controlling it; but it is equally true that such classification cannot be made arbitrarily and without reference to the effect upon the public of the acts or business so classified.

In *Gulf, etc. Ry. Co.* vs. *Ellis*, 165 U. S., Mr. Justice Brewer says: "That such classification must always rest upon some dif-" ference which bears a just relation to the act in respect of which " the classification is proposed, and can never be made arbitrar-" ily and without any such basis."

In *Cooley's Constitutional Limitations*, page *577, speaking of the regulation of corporations it is said: "The limit of the exer-

" cise of this power must be this; the regulations must have refer-
" ence to the comfort, safety and welfare of society. They must
" not be in conflict with any of the provisions of the charter, and
" they must not under the pretense of regulation take from the
" corporation any of the essential rights and privileges which the
" charter confers. In short, they must be police regulations in
" fact and not amendments to the charter in curtailment of the
" corporate franchise."

The classification, then, which the state may lawfully make must be of the business actually transacted and must be based upon some reasonable relation which such business bears to, or effect which it has upon, the public at large, and cannot be arbitrarily made upon the calling or occupation of the individual without reference to the business actually transacted. Thus it would not do to impose a license or penalty upon a surgeon for incurring an indebtedness for the purchase of necessary books or instruments of his profession while all others of the community are exempt from such penalty for incurring an indebtedness in their business. This would be arbitrary selection for the purpose of invidious and unjust discrimination against the surgeon.

The business of a bank consists in part in receiving deposits and repaying them on demand; also in lending money and buying and selling exchange and discounting notes and other commercial paper, and unless prevented by its charter it may lawfully borrow money to be paid by it at a fixed time in the future, with interest or other valid consideration. If it were conceded that the receipt of deposits by a bank, as that term is ordinarily understood, and its obligations to repay them on demand, was of such nature in its relation to, and effect upon the public at large as to furnish a basis for legitimate classification by the state for the purpose of regulating that particular branch of the business, certainly there is no more reason for denying to a bank the right to make a contract, even though it be insolvent, to borrow money to be paid at a fixed time in the future, than there is in denying such right to a mercantile or other trading corporation, or individual. The right to make such a contract is a ~~natural and common~~ legitimate one, not granted by any statute of the state, ~~not in derogation of~~ recognized by the common law, and when exercised without any fraudulent representations or practices is not injurious to any public interest nor to the peace or welfare of the community, and not within the proper scope of police regulation. *Allgeyer* vs.

State vs. Seneyd, 57 Minn 358 (S. Ct.)

Louisiana, 165 U. S., 578. Such right is of the highest value to the debtor in all classes of business, and by the exercise of it he is often saved from permanent embarrassment and financial ruin to himself and perhaps others.

The bank or banker is no exception to this rule. The fact that in the case of the bank it evidences such a contract in the form of a certificate of deposit payable at a fixed time in the future, bearing the rate of interest agreed upon with the lender, which is in effect a promissory note, does not change the nature of the contract nor the liability of the bank; it is still one for the borrowing of money to be paid at the time agreed upon and nothing else. To hold that it was not would be giving effect to the form and not to the substance of the contract.

The transaction between the plaintiff in error on behalf of the First National Bank of Decorah and John French is of the latter named character, and by the expressed terms of the contract it is not to be paid until the expiration of the term for which the money was borrowed, namely, six months, and not upon the check of Mr. French.

When not defined by statute the term "insolvency" ordinarily means "insufficiency of one's assets to pay his obligations." In bankruptcy laws and decisions it is often used in a more restricted sense, and is defined or held to mean "inability to meet one's obligations as they become due in the ordinary course of business. *Toof* vs. *Martin*, 13 Wall., at page 47. In the present bankruptcy law it is given its ordinary meaning. The Iowa law under consideration does not define it nor say what shall be evidence of it; but the supreme court of that state holds that it is there used in the restricted sense above mentioned. Under such construction thereof, if the assets of a bank, upon a fair valuation, should be double its obligations, or ample to pay them in full upon the winding up of its affairs, but because of temporary conditions it is unable to turn them so as to meet its obligations as they become due in the usual course of business, it is insolvent, and the bank must stop business; for if it declines to receive deposits it proclaims its embarrassment, which would surely result in closing it. If any officer who knows its condition should accept a deposit he incurs at once the penalty imposed by that law, even though he may in good faith believe that the bank will be able to pay the obligation in full at its maturity, and though it in fact may be so paid, or upon a final distribution of the bank's

assets. Under such circumstances the person accepting the deposit might be convicted of a felony, though the depositor or creditor in fact was not defrauded and suffered no loss or injury whatever.

In *Fuzz* vs. *Spaunhorst*, 67 Mo., 256, the supreme court of Missouri in speaking of the constitution of that state, which declared it to be a crime for a bank to receive deposits or create debts when insolvent, says: "It is a matter of common informa-" tion that there is a tide in the affairs of banks as well as of men; " that financial crises occur when ample assets become for the " time being comparatively valueless, when but for timely as-" sistance institutions of the most undoubted actual solvency " must succumb to the existing pecuniary pressure. It is obvious " if assistance be absolutely necessary even for a brief period of " time, that the bank requiring it cannot justly claim to be en-" tirely solvent at the moment when assistance is needed. It is " equally obvious that a deposit made with, or loan to, the bank " under the circumstances above stated, though made with full " knowledge by the depositor or creditor, and with the express " purpose of aiding the bank so as to prevent failure and conse-" quent loss * * would subject every officer assenting to such " loan or deposit though done with the best of motives, to indi-" vidual responsibility." This aptly describes the effect of the Iowa law in its practical operation. It is not one to define and punish actual frauds or false pretenses in the obtaining of property or incurring of indebtedness applicable alike to all persons in the community; but is one that arbitrarily selects persons conducting a banking business and prevents them from incurring an indebtedness though no fraud is practiced or fraudulent representations whatever made by them in doing so, while all others of the community may lawfully incur such indebtedness, though in the same condition as to insolvency as the bank, or even worse. It arbitrarily declares it to be a crime for a bank or its officers to incur an indebtedness to be paid in the future, solely because it is a bank and conducts a banking business, if it afterwards transpires that when such debt was contracted the bank was "unable to meet its obligations as they became due in the usual course of business." As so construed by the supreme court of Iowa and applied to a contract like that between the First National Bank of Decorah and John French shown by this record, it is believed that such law is within the inhibitions of the fourteenth amendment to the federal constitution and void.

Respectfully submitted,

H. T. REED, C. W. REED,
for Plaintiff in Error.

ADDENDA.

The principle contended for in the second division of our arguments is further illustrated in *Railroad Co.* vs. *Peniston*, 18 Wall., 5, cited by the defendant in error; and in *California* vs. *Railroad Co.*, 127 U. S., 1.

In *Railroad Co.* vs. *Peniston*, a majority of this court held that the physical property of the Union Pacific Railroad Co., a corporation organized under the laws of the United States, was subject to taxation by the state in which such property was located; but,

In *California* vs. *Central Pacific Railroad Co.*, it is held that the franchises of a corporation organized under a law of congress, that is, the right to exercise the powers and privileges granted by the law of congress, are not subject to taxation or to be interfered with in any manner by the state. The court says: "It "seems very clear that the state of California cannot take them "(the franchises) away, nor destroy, nor abridge them, nor "cripple them by onerous burdens. * * It may undoubtedly "tax outside visible property of the company in the state. That "is a very different thing. But may it tax franchises which are "a grant of the United States? In our judgment it cannot. "What is a franchise? Blackstone defines it as 'a royal privilege "or branch of the king's prerogative subsisting in the hands of "the subject.' * * It is a right, privilege, or power of public "concern which ought not to be exercised by private individuals "at their mere will and pleasure, but should be reserved for pub-"lic control and administration, either by the government di-"rectly or by the government agents acting under such condi-"tions and regulations as the government may impose in the "public interest and for public security. Such rights and pow-"ers must exist in every form of society. * * No persons can "make themselves a body corporate without legislative author-"ity. *Corporate capacity is a franchise.* * * In view of this "description of the nature of a franchise, how can it be possible "that a franchise granted by congress can be subject to taxa-

" tion by a state without the consent of congress? * * Recol-
" lecting the fundamental principle that the constitution, laws,
" and treaties of the United States are the supreme law of the
" land, it seems to us almost absurd to contend that a power
" given to a person or corporation by the United States may be
" subject to taxation by a state."

The franchise possessed by the Central Pacific Railroad Co. which is so held to be beyond the power of the state to tax or otherwise interfere with was the right to construct, equip, own, and operate a line of railway in and through the state of California and other states and territories of the United States. Such right might be exercised by an individual or corporation under the authority of a law of a state. But congress deeming it expedient that a railroad and telegraph line should be constructed from the Missouri river to the Pacific ocean, which might be used by the general government for postal, military and other purposes, authorized the incorporation of a company for this purpose, in pursuance of which the Central Pacific Railroad Co. was clothed with the powers and privileges which were deemed necessary to enable it to construct, equip, own, and successfully operate such a line. The powers so conferred upon such company are held to be franchises granted by the United States, and not subject to taxation or burdens of any kind imposed by state authority.

H. T. REED, C. W. REED,
For Plaintiff in Error.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1902.
No. 92.

JAMES H. EASTON,
Plaintiff in Error,

against

THE STATE OF IOWA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

CHARLES P. BROWN,
JOHN I. CRAWFORD,
Counsel for Plaintiff in Error.

11700

Supreme Court,

OF THE UNITED STATES.

OCTOBER TERM, 1902.—No. ~~318~~. 92

JAMES H. EASTON,
Plaintiff in Error.

against

THE STATE OF IOWA,
Defendant in Error.

In Error to the Supreme Court of the State of Iowa.

Supplemental Brief for Plaintiff in Error.

The plaintiff in error was convicted in the District Court of Iowa in and for Fayette County upon an indictment which charged him with the offence of receiving, as President of the First National Bank of Decorah, a deposit of $100, the said bank being at the time of such deposit insolvent, and such insolvency being known to the plaintiff in error.

The conviction was had under sections 1884 and 1885 of the Code of Iowa (1897), which sections are set forth in full in the main brief of Messrs. Reed, page 2.

The judgment of conviction having been affirmed by the Supreme Court of Iowa, the case has been

brought into this Court upon a writ of error, and the plaintiff in error prays that the judgment be reversed.

The statute of Iowa under which the indictment and conviction were had provides in substance that no bank or person engaged in the banking business shall, when insolvent, accept or receive on deposit any money, bank bills, United States Treasury notes, etc., etc, and that if any such bank or person shall receive or accept on deposit any such deposit as aforesaid when insolvent, any officer knowing of such insolvency who shall knowingly receive or accept * * * any such deposit * * * shall be guilty of a felony and upon conviction shall be punished, etc., etc.

The main contention of the plaintiff in error is that the statute of Iowa upon which the indictment and conviction rests, if construed and held to apply to national banks and the officers thereof, is in conflict with the Constitution of the United States and the Act of Congress known as the National Banking Act, and is, so far as it is applicable to national banks, void. That the act of receiving a deposit of money alleged in the indictment to have been received by the plaintiff in error was an act authorized to be done by him by the law of Congress, and was, therefore, a lawful act, and that consequently the District Court of Iowa had no jurisdiction to inquire into or to try and adjudge the plaintiff in error to be guilty of a crime in receiving such deposit.

This question was raised by the plaintiff in error by appropriate exceptions taken to the rulings of the Trial Court at different stages of the trial, all of which are fully set forth in the transcript of record, pages 2, 3, 4, 29–31, and are referred to in detail upon the main brief of Messrs. Reed, at pages 3 and 4.

Points and argument.

I.

It may be assumed for the purposes of this argument, as contended by the learned Attorney General, that,

Upon the construction of the statue under which the plaintiff in error was indicted and convicted, this Court will follow the decision of the Supreme Court of Iowa, and treat the law as one intended by the legislature to be applicable to national banks and the officers thereof. Upon that assumption the the question is presented whether the statute is valid in so far as it is made applicable to national banks, and the officers thereof, conducting and transacting the banking business under the Law of Congress.

II.

National banks are agencies of the National Government created by Congress to enable it to exercise and conduct its fiscal powers and operations. They are instruments of the Federal Government created for public purposes and as such necessarily subject to the paramount authority of the United States.

Congress is the sole judge of the necessity for the incorporation of such institutions and of all matters pertaining to the extent of their powers, the manner of conducting and transacting business and the regulation thereof.

McCulloch *v.* Maryland, 4 Wheaton, 425.

Osborn *v.* U. S. Bank, 9 Wheaton, 738.
Legal Tender Cases, 110 U. S. Rep., 421.

III.

The necessity for the incorporation and regulation of such institution theretofore being a matter solely within the jurisdiction of Congress, the whole subject is a matter out of the plane of State control and jurisdiction. The States cannot legislate upon such a matter, and statutes enacted by State legislatures cannot, by judicial interpretation and construction, be made applicable to such institutions.

It is not contended that national banks in the transaction of their business are not, in many respects, subject to the laws of the State within which they are located. It is conceded that they are. In the acquisition and transfer of property, in the making and interpretation of contracts, in the right to sue and the liability to be sued, they are in the main governed by and subject to State laws. Upon all such matters they are subject to State laws the same as all other persons residing in or transacting business within the State.

But as instrumentalities and agencies of the Federal Government, they are not subject to the jurisdiction of the State, but solely to the jurisdiction of Congress and a State law which incapacitates them from discharging such duties is unconstitutional.

An attempt of a State to define the duties of national banks or control the conduct of their officers is absolutely void when such attempted

exercise of authority conflicts with the law of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of the Federal Government to discharge the duties for the purpose of which they were created.

Davis *vs.* Elmira Savings Bank, 161 U. S., 275, 283.

IV.

The rules of law being, therefore, as stated in the foregoing propositions, the question is presented: When and to what extent is a National Bank to be deemed an instrument of the Federal Government.

We confidently contend that a bank is an instrument or agency of the Federal Government in everything that it does as a bank. It is the creation of Congress for a federal purpose, and it is endowed with its powers because such powers were deemed essential by Congress to perform the duties for the purposes of which it was created. The necessity for its creation and the powers which should be conferred upon it were matters solely within the jurisdiction of Congress.

As said by Judge Marshall in Osborn *vs.* the Bank (*supra*):

> "The operations of the bank are believed not only to yield the compensation for its services to the government, but to be essential to the performance of those services. Those operations give its value to the currency in which all the transactions of the goverment are conducted. They are, therefore, inseparably connected with those transactions and are, therefore, of the very essence of its character, as a national instrument. The business of the bank constitutes its capacity to perform its functions

> as an instrument for the money transactions of the government. Its corporate character is merely an incident which enables it to transact the business more beneficially."

No distinction can, therefore, be drawn between the bank as an agency of the Government and as a corporation trading with individuals for its own benefit. Any such claim was absolutely overruled in the cases of McCulloch *vs.* Maryland and Osborn *vs.* The Bank (*supra*). In the latter case Judge MARSHALL said:

> "The bank is not considered as a private corporation whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or persons having no political connection with the Government is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the Court in the case of McCulloch *vs.* Maryland is founded on, and sustained by, the idea that the bank is an instrument which is necessary and proper for carrying into effect the powers vested in the Government of the United States."

It follows from these rules that in treating the national bank as a fiscal agency of the Federal government it is to be regarded as such in everything that it does as a bank. In other words, in the transaction and conduct of the banking business, it is acting not as a private individual but as a federal agency.

V.

The National Banking Act does not prohibit or forbid the receipt of deposits by a bank when insolvent at any time before it is taken out of the control of its officers by the Comptroller of the Currency, acting under the provisions of the National Banking Act.

This general proposition is conceded in the opinion of the Supreme Court of Iowa in State *vs.* Fields, 98 Iowa, 74.

It is said by Judge ROTHROCK in the course of his opinion:

> "It is conceded that there is no act of Congress prohibiting the receipt of deposits at any time before an insolvent bank is taken out of the control of its officers under the provisions of the federal statute."

Reference, however, is appropriate to the provisions of the banking act to show the power granted to national banks, and the power of control over such banks which Congress has vested in the Comptroller of the Currency.

The National Banking Act is contained in sections 5133 to 5243 of the Revised Statutes.

It is provided therein that banks can commence business when the Comptroller of the Currency shall issue his certificate that the association has complied with all the provisions of law required to be complied with (§§ 5168, 5169).

They are to be managed by a Board of Directors elected by stockholders (§ 5145).

They are authorized—To make contracts—To prescribe by their Boards of Directors by laws regulating the manner in which their general business shall be conducted and the privileges granted it exercised and enjoyed—To exercise by its Board of

Directors or duly authorized officers or agents subject to law all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange or other evidences of debt by *receiving deposits*;—by buying and selling exchange, coin and bullion—by loaning money on personal security, and by obtaining, issuing and circulating notes (§ 5136).

They are authorized to purchase, hold and convey real estate (§ 5137); to be depositories of public money (§ 5153); to receive and issue circulating notes (§§ 5157 to 5189), and they are required to have and keep on hand at all times, in lawful money of the United States, a certain percentage of the aggregate amount of notes in circulation and deposits, the percentage depending upon the location of the bank (§ 5191); to make reports at stated intervals to the Comptroller of the Currency of their resources and liabilities (§ 5211), to make semi-annual reports of the deposits, etc., to the Treasurer of the United States (§ 5215), and they are prohibited from being indebted or in any way liable to an amount exceeding the amount of capital stock paid in and remaining undiminished, except upon demands of the following nature, First, notes of circulation—Second, moneys deposited with or collected by the association—Third, bills of exchange or drafts drawn against money on deposit to the credit of the association or due thereto—Fourth, liabilities to stockholders for dividends and reserve profits (§ 5202).

The Comptroller of the Currency is vested with power to require any bank when its money reserve falls below the amount required, to make the same good within thirty days, or in default thereof to appoint, with the concurrence of the Secretary of the Treasury, a receiver to wind up the business of the bank (§§ 5191, 5234); to re-

quire the capital stock to be made good by payment within three months where the same is impaired, and in default thereof, to appoint a receiver to close the business of the bank (§ 5205) and to appoint receivers to wind up the business of the banks when they are insolvent (§ 5232).

Power is given to the Comptroller of the Currency, with the approval of the Secretary of the Treasuary, to appoint examiners, at any time, who shall have power to make examinations into all the affairs of the banks (§ 5240).

Severe penalties for violation of the banking law are prescribed by § 5209, and provision is made for the forfeiture of the charter in § 5239, and by § 5241 it is provided that no association shall be subject to any other visitorial powers than such as are authorized by the Banking Act or vested in the courts of justice.

The sections referred to, we respectfully submit, embrace the whole subject of banking. They provide for the organization of the banks, for their government, enumerate their powers and regulate the transaction of the business. Power is delegated to the Comptroller of the Currency of the most ample character, and control of the association is vested in him with the power in the exercise of his judgment and discretion, subject to the approval of the Secretary of the Treasury to appoint receivers and close up the business of the associations.

Section 5136 expressly authorizes banks to receive deposits, and in no provision of the law is that power limited or restricted, while the bank is permitted by the Comptroller of the Currency to carry on the business of a bank.

The only instance in which a bank is prohibited from carrying on the business in the manner prescribed by Section 5136 before the Comptroller has, through a receiver, taken possession of the bank is

when the default in the payment of its circulating notes has been ascertained by the Comptroller (§5228), and the clear implication from Section 5202 is that although insolvent, a bank may receive deposits until the Comptroller shall appoint a receiver to close up its affairs.

McDonald *vs.* Chemical Nat. Bank, 174 U. S., 610.

A bank may be said to be insolvent whenever its capital stock has become impaired. The National Bank Act, however, does not require the officers to cease receiving deposits for this reason; but gives the bank three months in which to make good the impairment by assessment upon the shareholders. (Rev. Stat. U. S., 5205). Hence what is expressly permitted under the Federal statute might constitute a crime under the State statute; and there might plainly be a conflict between the laws of the two jurisdictions.

VI.

A State has no power to legislate in reference to National Banks, or to alter or supplement any of the provisions of the National Banking Act.

This proposition would seem to be a plain deduction from the principles decided by this Court in reference to such institutions. The government of the United States is created for one purpose, the State governments for another. Each possesses its own powers, and there is no more authority for the States to interfere with the regulation of an agency or instrument of the Federal Goverment than for the latter to inter-

fere with and regulate a purely State institution. A State cannot arrest the operation of a law of Congress, and Congress cannot arrest the operation of the law of the State. Within their own jurisdiction each is separate and independent of the other.

The proposition, moreover, has direct support in the decisions of this Court.

In the United States *vs.* Fisher, 2 Cranch, 258, in deciding the question as to the power of Congress to enact that debts due to the United States should have priority of payment out of the estate of an insolvent and expounding the clause of the Constitution giving power to Congress to make all necessary and proper laws, Judge MARSHALL said :

" In construing the clause it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specific power. Where various systems might be adopted for that purpose, it might be said with respect to each that it was not necessary because the end might be obtained by other means. Congress must possess the choice of means and must be empowered to use by any means which are in fact conducive to the exercise of a power granted by the Constitution."

In *McCulloch* vs. *Maryland* he again said upon the same subject :

> " We admit, as all must admit, that the powers of the government are limited and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national Legislature that discretion with respect to the means by which the power it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the

manner most beneficial to the people. Let the end be legitimate. Let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end which are not prohibited but consist with the letter and the spirit are constitutional."

In Farmers' National Bank *vs.* Dearing, 91 U. S., 29, it was said:

> "The States can exercise no control over National banks nor in anywise affect their operation, except so far as Congress may see proper to permit; everything beyond this is an abuse, because it is the usurpation of power which a single State cannot give. The State has no power by taxation or otherwise to burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

In Prigg *vs.* Pennsylvania, 16 Peters, 539, it is said:

> "If Congress has a constitutional power to regulate a particular subject, and does regulate it in a given manner and in a certain form, it cannot be that State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

In Hall *vs.* DeCuer, 95 U. S., 499, it is said:

> "The legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence

as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

In Leisy *vs.* Hardin, 135 U. S., 100, Chief Justice FULLER said:

> "Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States."

VII.

The Statute of Iowa, pursuant to which the plaintiff in error was indicted and convicted, violates the fundamental propositions stated above. It attempts to supplement the National Banking Act and to regulate and control and limit the business of national banks within the State of Iowa, and directly invades the jurisdiction conferred by Congress upon the Secretary of the Treasury and the Comptroller of the Currency.

The National Banking Act does not forbid the receipt of deposits when a bank is insolvent, but it vests the Comptroller of the Currency with power in the exercise of his judgment and discretion to interfere, and by the appointment of a receiver arrest the operations of the bank under such circumstances. The law of Iowa expressly provides that "no bank shall, when insolvent, accept or receive a deposit."

The distinction between a valid and invalid State law in its application to national banks is well illustrated in the cases of Davis *vs.* Elmira Savings Bank (*supra*) and McClennan *vs.* Chipman, 164 U. S., 356.

In the latter case a law of Massachusetts was

held to be valid for the reason that it in effect impressed a lien in favor of creditors upon the property of insolvent debtors in that State, owned by them within six months prior to the filing of a petition to declare such person insolvent, and incapacitated the insolvent debtor from displacing such lien by any conveyance or transfer of his property within the time named, with intent to prefer one creditor over the other.

This law was held to be valid for the reason that it acted solely upon the property and persons within the jurisdiction of the State.

In Davis *vs.* the Savings Bank a law of the State of New York which attempted to give a savings bank organized under the laws of that State a preference in the assets of an insolvent national bank, was held to be invalid, for the reason that it was repugnant to the National Banking Act which requires the assets of an insolvent national bank to be ratably distributed among its creditors. The State law related to national banks and to the duty on the part of the officers thereof in case of insolvency. Hence this Court held that the State law was inoperative because it overrode the plain text of the National Banking Act.

The principle of this decision is directly applicable to the case at bar for the reason that the law of Iowa, under which the plaintiff was indicted and convicted, in prohibiting a national bank from accepting a deposit when insolvent, overides directly the National Banking Act which permits a national bank to receive deposits as long as the Comptroller of the Currency and the Secretary of the Treasury in the exercise of their judgment deem it wise so to do.

The argument of the learned Attorney-General upon the subject of fraudulent banking and the evils of permitting a bank to receive deposits when insolvent needs no serious consideration. The

question before the Court is whether the Legislature of Iowa possessed the power to enact the statute under which the plaintiff in error was convicted. If the State had no such power the law must be held to be void, however good and beneficial it may be.

Congress being the sole judge of the necessity for the creation of national banks was also the sole judge as to the extent of the powers with which they should be endowed. Whether they should be prohibited from transacting business absolutely or to a limited extent, or not at all, when insolvent was a question of policy which Congress alone could decide. Congress has dealt with the subject by vesting control of such institutions in the Secretary of the Treasury and the Comptroller of the Currency and endowing such officers with power to arrest the operations of a bank and appoint a receiver thereof when insolvent, or when it refuses to make good an impairment of capital or its money reserve. It has vested these officers with full and complete power through the reports required to be made by the banks and by the power of visitation to ascertain at all times the conditions of the banks. It has not, however, prohibited, as the law of Iowa prohibits, the transaction of the business of banking when the institution is insolvent, but has left the officers named to deal with such conditions as they arise. That it is not the policy of the Federal government to arrest the business of banks and enforce liquidation for all violations of the Banking Act is well known.

In times of financial distress the Treasury Department has frequently lent its aid to assist banks to tide them over their embarrassments until better business conditions prevail. During the panic of 1893 it is a matter of history that the reserves in the banks of New York fell many millions below the legal requirements, and within the

past year the same conditions prevailed to a lesser extent.

To continue business when insolvent is not necessarily a fraud or a crime on the part of a bank or an individual engaged in business.

In McDonald *vs.* Chemical National Bank, 174 U. S., 610, this Court recognized the right of a national bank to continue to transact business until closed by the Comptroller of the Currency, and in that case Mr. Justice SHIRAS said:

> "It is a matter of common knowledge that banks and other corporations continue in many instances to do their regular and ordinary business for long periods, though in a condition of actual insolvency as disclosed by subsequent events. There is often a hope that, if only the credit of the bank can be kept up by continuing its ordinary business, and by avoiding any act of insolvency, affairs may take a favorable turn, and thus suspension of payment and business be avoided."

The case of Fuzz *vs.* Spaunhorst, 67 Mo., 256, contains remarks of the same character.

The receipt of deposits in the regular way is necessary to the continuance of the bank's business; and a refusal to receive deposits would bring about an immediate suspension. If, therefore, the State Statute is valid, it has the effect of forcing the bank to close; and so the question whether it shall continue in business is determined by a State law.

The question of the solvency or insolvency of a bank is one of fact, dependent upon many subsidiary facts. As the bank's assets consist largely of commercial paper and securities, the question of the value of such paper and securities must largely enter into the consideration and determination of the matter. The Federal statute commits the determination of this question to the Comptroller of the Currency, who, from his knowledge of the banking

business and his superior attainments and experience, is the person best qualified to pass upon it; but the State statutes leaves the decision to a local jury, ignorant perhaps of business methods, and possibly influenced by prejudice and ill-will. Now, the Comptroller might have one opinion upon the matter and a local jury might have a very different opinion, and hence it is plain that there might be a clash between the Federal and State authority. The Comptroller of the Currency, in the exercise of his best judgment, might allow the bank to remain open, but the officers would do so at the peril of having some local jury afterwards decide that their action in so doing was a crime.

Whether or not the act denounced by the Iowa statute shall be made a crime is a question of policy; and as to the wisdom of such legislation, there may be, and, indeed, there is, a difference of opinion. The receipt of a deposit when a bank is insolvent is not a crime at common law, nor is it made such by the legislatures of most of the States. The State of New York, for example, which includes the money center of the country has never adopted such a law. Statutes of this character are novel, and appear to be the outgrowth of conditions which prevailed in certain communities. Much could be urged against their utility and expediency. Conditions may arise where they would work great mischief. In financial panics, the safety or ruin of the business of the country will depend upon the judgment, foresight and courage of the bankers, and much must be left to their sagacity, honesty and good faith. One suspension will often cause others, and the closing of one bank may drag down a number. Many banks under such conditions may be for the time being insolvent; and yet it might be most unwise to close them. A statute which would require this to be done, without allowing the use of judgment or dis-

cretion, no matter how honestly exercised, might itself be the means of bringing about the very ruin it was intended to prevent. The question, being thus one of expediency and policy, it is, when applied to the national banks, to be determined by Congress, and not by the legislature of the States; and the omission of such provisoons from the National Bank Act is equivalent to an express declaration that Congress meant that such inflexible conditions should not be imposed upon the national banks. Congress adopted the wiser and more conservative course of leaving these matters to the sound discretion of the Comptroller of the Currency, and vesting him with plenary powers in such cases. With this policy the radical provisions of the Iowa Statute are plainly in conflict.

It is quite clear, we contend, that Congress has legislated upon the very subject dealt with by the Statute of Iowa. It has, however, dealt with it in a different spirit and more liberal manner. And the policy so expressed in the National Banking Act was one solely within the power of Congress to determine, and the State has no power to deal with it. The question is not one of concurrent jurisdiction. Concurrent power does not exist when in reference to the subject matter it is necessary to be exercised by Congress exclusively. The State can no more attempt to regulate the business of national banks than Congress could attempt to regulate the business of purely State institutions. If the power to legislate in reference to national banks exists in the State at all, it is of course unlimited.

If the law of Iowa can be upheld the State could prohibit a bank from continuing the transaction of business when the money reserve fell below the legal limit, or whenever there was a default in the payment of circulating notes or whenever the indebtedness of the bank should exceed the amount

of the capital stock paid in and undiminished. In other words, it would absolutely destroy the Congressional system and substitute a system of its own. The mere contemplation of such a condition of legislation and of conflict between Congress and the State Legislature must lead to the conclusion that the contention of the Attorney-General cannot be sustained.

The national banking system is one which necessarily needs to be uniform throughout all the States, and this necessarily requires exclusive control in Congress.

In Farmers' and Mechanics' National Bank *vs.* Dearing the Court gave effect to this consideration, and Justice Swayne said:

> "There was reason why the rate of interest should be governed by the law of the State where the bank is situated; but there is none why usury should be visited with the forfeiture of the entire debt in one State with no penal consequence whatever in another. This, we think, would be unreasonable and contrary to the manifest intent of Congress."

So, if the law of Iowa is sustained, there would be one policy as to national banks in one State and another in other States, and an act done in the transaction of the business of the bank which would be lawful in one State would be a felony and liable to be punished by imprisonment in another.

Another question would arise which is of the utmost importance in the business of banking, viz.: what constitutes an act of insolvency, or when could a bank be said to be insolvent?

Under the bankruptcy laws insolvency does not necessarily mean inability to pay debts. A person or a corporation under the bankruptcy laws may be insolvent when there is a failure to meet their obligations at maturity, but such obviously is not

the popular meaning of the term, and the statute which forbids a corporation or an individual from doing an act when insolvent would ordinarily mean when assets were insufficient to pay debts.

It is obvious from a consideration of the law of the State of Iowa that in a prosecution under the act there is no means of ascertaining whether a bank is insolvent except by proof to be made at a trial. The State has no power of visitation over such institutions for the reason that that power is expressly denied to it by the National Banking Act.

Neither could the State enforce a law of this character by excluding the national bank from doing business in the State. It is therefore quite plain that the punishment of offenses of this character under a State law would lead either to a rule that would have to be determined in each case as it arose, or else a rule that would be applied in each State. The result would be confusion, lack of uniformity in the business of banking and the punishment of acts in one State as crimes which would be lawful in other States.

The nature of the subject, the purpose to be served and the character of the corporations created necessarily require that the subject-matter of the banks should be dealt with alone by Congress.

It is a matter of common knowledge that the national banks have acted as agents of the government in the sale and distribution of bonds, in the receipt and deposit of revenue, as depositaries of public moneys and in the transmission of money and property from one part of the country to another, and in all the numerous relations and business which the government has with its fiscal agents. Any interference by the State with the system created would essentially impair, if it did not destroy, its vitality. Instead of having one system uniform throughout the nation, there would be as many different systems as there are States.

The nature of the banks and the purpose for which they are created are so closely connected with the money affairs of the government, with the collection, disposition and disbursement of its revenue that the State can no more be permitted to interfere with or regulate their business, than it could be permitted to impose upon them a tax.

The subject in its very nature is exclusive in the national government and excludes any interference by the States. If this proposition is not sound, then the national goverment is not supreme within its own sphere, but at any time may be embarrassed, crippled or obstructed in performing its most vital functions of government. For if the power exists in the States to control and regulate the business of national banks, such power is unlimited. Admit its existence and the whole system enacted by Congress is imperilled and may be overthrown.

The State was not permitted by the National Banking Act to enact the law in question as has been done in reference to taxing the shares in National Banking Association. The law does not operate upon the private property of the bank or its officers or touch the latter as individuals or as citizens of the State. It does not relate to the private property of any of the officers of the bank or affect their family or social relations.

Its manifest purpose is to operate upon the bank, and it seeks to enforce obedience by the bank to the mandate of the State by the imposition of severe penalties which it imposes upon the officers of the bank who, while acting as such, should disobey the law.

It is the business of the bank which the law seeks to regulate and control, and it touches the individual officers only as a means of enforcing obedience by the bank to the law. In other words, it restrains the bank from performing its functions

in that which is vital to the corporation and which was conferred upon it for the purpose of giving value to the bank as a government agent and also to the notes which it issues and circulates and in which the transactions of the government may be conducted. It seeks to curtail the business of the bank and punish its officers for doing an act which the law of Congress expressly permits them to do.

Judge Marshall has pointed out in McCulloch *vs.* Maryland that the corporate character of these institutions is merely an incident which enables them to perform their functions beneficially to the government; that if Congress had created a distinct officer under whom, by government agents, the same functions should have been performed as are now performed by the banks, and the emoluments and profits of the banking business drawn into the treasury, the right of State control would have been the same.

If such a system had been established it would not be seriously claimed that governmental agents charged with banking duties could be controlled in the transaction of their business by the State legislatures

The principle applied in Ohio *vs.* Thomas and *In re* Waite and other cases cited would have been directly applicable.

The banks in their legal relation to the States stand upon the same footing as such agent would have stood. The vital question which lies at the foundation of the claim of State control is as stated by Judge MARSHALL in Osborn *vs.* The Bank, viz.: Are the faculties conferred upon the bank so essential to the fiscal operations of the government as to authorize Congress to confer them, and as that learned Judge said: "Let this be admitted, and the question, does the right to preserve them exist, would always be answered in the affirmative."

The question is not as to the *quantum* of State

regulation, but whether there shall be any such regulation at all. This point was fully considered in *McCulloch* v. *Maryland*. There the Court refused to consider whether or not the amount of tax imposed would interfere with the operations of the bank, but treated the question as one of power only. Chief Justice MARSHALL said: "We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give."

VIII.

This case falls within the principles laid down in McCulloch vs. Maryland, and in Osborn vs. United States Bank, that the States have no power to tax a national bank. It is also within the principle applied in Briggs vs. Penn., Ohio vs. Thomas, in re Waite and Cuningham vs. Nagle.

In the preceding points, we have endeavored to show that the nature of the subject and the purpose intended to be served by the creation of National banks require that the subject matter of banking, so far as such institutions are concerned, should be within the exclusive jurisdiction of Congress.

Concurrent power over such institutions cannot exist. The matter is wholly without the plane of State jurisdiction. In this view, the case cannot

be distinguished in principle from the cases upon taxation.

The power of taxation is an incident of sovereignty and is co-extensive with that of which it is an incident. All subjects therefore over which the sovereign power of the State extends are in its discretion legitimate subjects of taxation, and this may be carried to any extent to which the government may choose to carry it. In its very nature it acknowledges no limit.

Cooley on Taxation, Chap. 1, p. 7.

No State can, however, impose taxes on persons, property or other subjects of taxation which are not within its jurisdiction. This is self-evident and has peculiar application to this country under the Federal Constitution which apportions the sovereign authority between the State and the nation and gives to each over certain subjects exclusive jurisdiction.

Whatever pertains to this exclusive jurisdiction is excluded from the taxing power of the other as much as if it were beyond its territorial limits. * * * It is the theory of our system of government that the State and the nation alike are to exercise their powers respectively in as full and ample a manner as the proper department of government shall determine to be needful and just, and as might be done by any other sovereignty whatever.

This theory, by necessary implication, excludes any interference by either the State or the nation with an independent exercise by the other of its constitutional power.

If it were otherwise neither government would be supreme within what has been set apart for its exclusive sphere; but on the other hand would be liable at any time to be crippled, embarrassed and perhaps wholly obstructed in its operation at the

will or caprice of those who for the time being wielded the authority of the other. * * *

It follows that the means and agencies provided and selected by the Federal Government as necessary and convenient to the exercise of its functions cannot be subject to the taxing power of the States, and so also the Federal Government is without power to tax the corresponding means and agenciesof the States.

Cooley on Taxation, Chap. 3, pp. 56–58.

Within the principles, stated by Judge Cooley, States cannot tax a bank chartered by Congress as a fiscal agent of the Government.

McCulloch *vs.* Maryland, 4 Wheaton, 316.

Osborn *vs.* The Bank of the U. S., 9 Wheaton, 738.

Nor the loans of the United States contracted under the power conferred by the Government to borrow money.

Weston *vs.* Charleston, 2 Peters, 499.

Bank of Commerce *vs.* N. Y., 2 Black, 620.

Nor the Revenue stamps issued by the United States.

Palfrey *vs.* Boston, 101 Mass., 329.

Nor the salary or emoluments of Federal officers.

Dobbins *vs.* Commissioners of Erie Co., 16 Peters, 435.

The Federal Government cannot tax the salaries of State officers.

Ward *vs.* Maryland, 12 Wall., 418–427.

Collector *vs.* Day, 11 Wall., 117.

Freedman *vs.* Sigel, 10 Blatch., 327.

Nor the judicial processes of State Courts.

Moore *vs.* Quirk, 105 Mass., 49.
Carpenter *vs.* Snelling, 97 Mass., 455.
People *vs.* Gates, 43 N. Y., 40.
Green *vs.* Holway, 101 Mass., 293.

Nor require stamps upon bonds of State officers.

State *vs.* Gaston, 32 Ind., 1.
See also Cooley on Constitutional Limitation, pages 481 to 484, and cases cited in notes.

The power of taxation possessed by the several States is not abridged by the Federal Constitution except in Article 1, Section 10, Subdivision 2, which has no relation to the subject under discussion.

It is settled law however, that the States have no power to tax a national bank, because such an institution is an agency of the Federal Government, and as such is excluded from the taxing power of the States in which it is located as fully as if it was located outside of the territorial limits of the State. By parity of reasoning, it must follow that so far as the power of the bank is concerned, the bank is outside of the State jurisdiction.

An act which Congress has authorized cannot be made a crime by a State Legislature. It is upon the latter principle that Rigg *v.* Pennsylvania was decided. The same rule was applied in Ohio *vs.* Thomas, *In re* Waite and Cuningham *vs.* Nagle, to protect an individual from indictment under State laws for acts done while acting under a law of Congress or by the direction of a Federal officer.

In Waite's case, Justice SHIRAS stated the rule as follows: "When a person seeks the benefit of the laws of the United States upon some matter wholly within Federal control * * * the test of the legality of the acts done by him is to be found in the laws of the United States."

This rule has full application to the plaintiff in error. The indictment charges an act done by him as President of the First National Bank of Decorah. It is for that act viz., the receiving and accepting of a deposit of money as President of such bank that he has been convicted. The legality of that act within the rule of the case cited, is to be determined by the laws of the United States and not by the law of Iowa. To paraphrase from Judge Shiras' opinion: "The State statutes do not furnish the test of the legality or criminality of the acts done by the President of a national bank when engaged in the transaction of the business of the bank of which he is the President."

It is said in the course of the opinion in State *vs.* Field, that when a man becomes an officer of the government, he does not cease to be subject to the laws of the State. That remark can have no application to the case at bar, for while the individual, is in a general way as a citizen of the State subject to all the laws of the State, what he does as an officer of the bank he does not by force or virtue of the State law but solely by force of the act of Congress. And in acting under the law of Congress he cannot be interfered with in any way, nor his duty prescribed or limited by the State law.

The purpose of Congress was very plainly to establish a uniform system for the control and government of the business of national banks. If the system is to be uniform, it must necessarily be free from any interference by the State legislature. If one State may impose one condition, another State may impose another, and the rule of uniformity will be absolutely destroyed.

The right of a bank to receive deposits is essential to enable it to continue business. As was pointed out by Judge Marshall in Osborn *vs.* The Bank: "Its trade and business is its sustenance and constitutes its capacity to perform its functions

as an instrument of the money transaction of the government." The subject matter was, therefore, one necessarily exclusive in Congress, and cannot be encroached upon by the States.

This clearly was well understood by Congress, and it conferred authority upon the banks to receive deposits to an unlimited amount, and it has not limited or restricted that power, except so far as it vested in the Comptroller of the Currency the power to ascertain and take notice of the conditions of the bank, and, when in his judgment and discretion it was necessary to interfere, to arrest their operations through the appointment of a receiver and close up their business.

IX.

The argument of the learned Attorney-General does not sustain the proposition for which he contends.

His argument, briefly stated, is as follows: The certificate of the Comptroller of the Currency is issued to a bank because of its solvency and ability to carry on a legitimate banking business. No certificate would be issued to an insolvent bank. Therefore, whenever a bank becomes insolvent, its authority to continue business must necessarily cease. The fact that a bank holds the Comptrollers certificate cannot and does not authorize it to continue business or to receive deposits a single instant after it becomes insolvent. It is contended that these propositions are supported by the well recognized and sound principle of law that the receipt of a deposit of money by an insolvent bank is a fraud, and it is contended that no

act of Congress or certificate of Comptroller of the Currency can authorize a fraud.

This argument is sufficiently answered by reference to the sections of the National Banking Act, which do authorize a bank to carry on its business after it is insolvent, and does not prohibit the receipt of deposits when insolvent, but refers the subject of the control of such institutions, under all circumstances, to the Comptroller of the Currency and Secretary of the Treasury.

Admitting all that the Attorney-General says, we submit it has no relevancy to the question of the power of the State of Iowa to enact the statute in question. Everything that is said on pages fifteen and sixteen of the brief of the learned Attorney-General might well be addressed to Congress, but it has no force in determining the scope of the constitutional power of a State upon the subject under consideration. The argument of the learned Attorney-General all leads up to the conclusion stated upon page sixteen of his brief as follows:

> "The effect of the statute is to require of the officers of all banks within the State, a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them, better to accomplish the purposes and designs of the general government, and is an aid, rather than an impediment, to their utility and efficiency as agents and instrumentalities of the United States."

Assuming this to be true, is not Congress the sole judge of the policy to be adopted and enforced in cases of the insolvency of national banks?

Can a state legislature say: The scheme adopted and put in force by Congress in respect to national banks does not command public confidence; or that does not give to such institutions sufficient stability

or compel from the managing officers thereof the highest degree of honesty and integrity; we will, therefore, supplement this law and enable the National Government to better accomplish its purpose and design, and strengthen the integrity, and efficiency of the bank as agents and instruments for the United States? Such a question must necessarily receive a negative answer. The question which this Court is called upon to decide is one of jurisdiction. Not one iota of power can be added to the State's jurisdiction by considerations of the character referred to. If such a power exists in the States, it has no limits, except the discretion of the State legislature. If a State may forbid the receipt of a deposit, it may limit the issue of circulating notes, increase the requirements in relation to the lawful reserve of money, require security for the deposits of public funds, exercise the power of visitation, and in a word, enact and enforce any law which, in the judgment of the State legislature shall be deemed to be necessary to give greater stability to the banks, enforce honesty and integrity of the managing officers or command a larger degree of public confidence. In a word, the State may overthrow the national banking system established by Congress, and within its territorial limits substitute its own.

We all admit, of course, that the powers of the general Government are limited; that the States are sovereign powers and retain every sovereign right not delegated to the general Government. But the admission of such elementary propositions of constitutional law do not aid very much in the solution of the question presented upon this appeal, nor do we advance very much by referring the law to the police power, or by the inquiry whether Congress has occupied the field of legislation. The States can exercise no concurrent or independent power in reference to the management of such institutions, where from the nature of the institution or where the purpose to be served is one

which must be necessarily exercised by the National Government exclusively.

Gilman *v.* Philadelphia, 3 Wallace, 730.

This question is one which depends solely upon the construction of the Federal Constitution, and we cannot close our argument in a better way than by quoting again from Judge MARSHALL'S opinion in McCullough *v.* Maryland: "We think the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the power it confers are to be carried into execution, which will enable that body to perform the highest duties assigned to it in the manner most beneficial to the public. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but, consistent with the letter and the spirit, are constitutional."

X.

It follows from the principles set forth in the preceding points that the judgment of the Supreme Court of Iowa should be reversed and the cause remanded to that Court with directions to reverse the judgment of conviction and discharge the plaintiff in error from the effect thereof.

CHARLES F. BROWN,
JOHN J. CRAWFORD,
Counsel for Plaintiff in Error.

Office Supreme Court
FILED
OCT 14 1902
JAMES H. McKENNEY
Clerk

No. 92.

Br. of Mullan for D.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

Filed Oct. 14, 1902.

In the Supreme Court of the United States

OCTOBER TERM, 1902.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

CHARLES W. MULLAN, ATTORNEY-GENERAL OF IOWA,
For Defendant in Error.

(No. 313.)

In the Supreme Court of the United States

OCTOBER TERM, 1902.

No. 313.

JAMES H. EASTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

CHARLES W. MULLAN, ATTORNEY-GENERAL OF IOWA,
For Defendant in Error,

BERNARD MURPHY, STATE PRINTER, DES MOINES, IOWA.

STATEMENT OF THE CASE.

The plaintiff in error was indicted by the grand jury of Winneshiek county in the state of Iowa on the first day of June, 1898, under sections 1884 and 1885 of the Code, for the offense of receiving, as president of the First National Bank of Decorah, Iowa, a deposit of one hundred dollars in money in the bank, at a time when the same was insolvent, in violation of the statute of Iowa.

The indictment is correctly set forth upon pages 1 and 2 of the transcript of the record, and, as its sufficiency is not in question, it is not necessary that it be here set out again.

The sections of the statute under which the indictment was found are as follows:

"Sec. 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in the banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks or drafts, or renew any certificate of deposit.

"Sec. 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment."

This statute was enacted by the Eighteenth General Assembly of Iowa, and became a law of the state on the third day of April, 1880. It was incorporated in the present Code without change, and was in force at the time when the offense charged in the indictment was committed.

A motion was made by the plaintiff in error to quash the indictment upon the grounds stated a length upon pages 2 and

3 of the transcript. The motion was overruled by the judge of the district court. A demurrer by the plaintiff in error to the indictment was then filed, the grounds of which are set forth at length upon pages 3 and 4 of the transcript. The demurrer was also overruled by the district court.

It is not necessary in presenting this case to do more than refer to the grounds of such motion and demurrer, as it is conceded that all proper objections were made to the indictment and procedure thereunder in the state court.

A change of venue of the cause was obtained from Winneshiek to Fayette county, and it was there tried by a jury in the district court of Iowa. The plaintiff in error was found guilty as charged in the indictment. He was sentenced to imprisonment in the penitentiary of the state for the term of five years. He appealed from the judgment and sentence of the district court to the supreme court of Iowa, and that court, on the twelfth day of April, 1901, affirmed the judgment of the district court. He then sued out a writ of error directed to the supreme court of Iowa, and the cause is now before this court to be heard upon such writ.

No evidence was offered in behalf of the plaintiff in error upon the trial in the district court, and the undisputed evidence discloses the following facts:

First. That the plaintiff in error was on the twenty-first day of August, 1896, president of the First National Bank of Decorah, which was located at the town of Decorah, in Winneshiek county, state of Iowa.

Second. That said bank held a certificate from Hugh McCollough, former comptroller of currency of the United States, issued on the sixth day of August, 1864, authorizing it to commence the business of banking under the act of congress entitled, "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864.

Third. That in 1883 the bank complied with the provisions of the act of congress enabling national banking associations to extend their corporate existence, and on the twenty-fourth day of February, 1883, the then comptroller of currency, John J.

Knox, issued and delivered to said bank a certificate showing that it had complied with such act of congress.

Fourth. That on the twenty-first day of August, 1896, one John French deposited in said First National Bank of Decorah, one hundred dollars lawful money of the United States, and received a certificate of deposit therefor, bearing interest at the rate of four per cent. per annum, payable to the order of himself.

Fifth. That the money so deposited by John French was by him delivered to, and received by, the plaintiff in error, as president of the First National Bank of Decorah, and as such officer he signed the certificate of deposit for and in behalf of the bank.

Sixth. That at the time the said French deposited the said sum of one hundred dollars in the First National Bank of Decorah, and at the time the same was received by the said James H. Easton, plaintiff in error, as president of such bank, the bank was and for more than two years prior thereto had been insolvent.

Seventh. That at the time the said French deposited the said sum of one hundred dollars in the First National Bank of Decorah, and at the time the plaintiff in error received and accepted such deposit, as president of said bank, the plaintiff in error knew that the said First National Bank of Decorah was then, and for more two years prior thereto had been, insolvent.

Eighth. That the plaintiff in error knowingly received and accepted the said deposit, of one hundred dollars, from the said French, as a deposit in the First National Bank of Decorah, with full knowledge that the said bank was then insolvent.

BRIEF AND ARGUMENT.

Eight errors are specifically assigned, but only two principal questions are presented thereby for determination by this court:

First. Was it the intention of the legislature of Iowa in enacting the law under which the indictment is found, that such law should apply to national banks?

Second. If the statute does apply to national banks as well as to banks incorporated under the state laws and individuals conducting the business of private banking in the state, is it

valid in so far as it applies to national banks, their officers and agents, conducting business in the state under the laws of congress?

Growing out of the second question, as stated, three other questions arise which may be properly termed subdivisions thereof, and which, for the sake of perspicuity, will be discussed as separate divisions of the argument, viz.:

Third. Has the federal government by act of congress intervened and occupied this field of legislation to the exclusion of the power of the state to legislate upon the subject?

Fourth. Is the enactment of the statute a proper exercise of the police power of the state?

Fifth. Does the statute unjustly discriminate against banks and their officers and agents and deny them equal protection under the laws of the state?

I.

Was it the intention of the legislature of Iowa, in enacting the law under which the indictment is found, that such law should apply to national banks?

The contention of the plaintiff in error is that such was not the intention of the legislature; while the defendant in error contends, that the act of the legislature of Iowa was intended to apply alike, to all banks and banking houses transacting business within the state.

The supreme court of the state of Iowa has directly held, in two cases which were presented to it, that this statute is applicable to the officers of national banks:

State of Iowa v. William Fields, 98 Iowa, 748.
State v. Easton, 85 N. W. Rep., 795.

In *State v. Fields* it is said:

"There are really but two questions presented for our consideration. One is that the statute under which the indictment was found is not applicable to officers of national banks. There is nothing in the act authorizing the conclusion that any banking institution is excluded from its operation. On the contrary, by its language it includes all banks, whether organized under the laws of the state or the acts of congress."

In *State v. Easton* it is said:

"We are in no doubt but that the legislative intent is that said sections shall apply to all persons, corporations and associations receiving deposits of money."

It is a familiar rule of law that the construction of a state statute, by the highest court of the state in which it is enacted, will be followed by the federal courts.

Bucher v. Cheshire R. R. Co., 125 U. S., 582.
Bacon v. Northwestern Life Ins. Co., 131 U. S., 264.
Ankeny v. Clark, 148 U. S., 354.
Adams Express Co. v. Ohio, 165 U. S., 219.

The statute under consideration is no exception to the rule. The highest court of the state having held, that it was the intention of the legislature that it should apply to the officers of national banks, as well as those of banking institutions organized under the laws of the state, such construction will be followed by this court.

Independent of this rule, the history of the enactment of the statute conclusively shows, that it was the intention of the legislature that it should apply to the officers of national banks.

It was enacted as chapter 153 of the laws of the Eighteenth General Assembly. Its provisions are general, and as sweeping as language can make them.

It provides:

"That no bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit," etc.

There is nothing in the language of the act which authorizes the conclusion that the officers of national banks are excluded from its operation. The statute as enacted was not amendatory to any existing statute, and did not depend upon any other for its construction and application. It was an independent act of the legislature and must be held to apply to all banks and bank officers, which come within the language of its provisions.

In the compilation of the present Code of Iowa, this statute was embodied in chapter 12 of title IX, many of the provisions of which are not applicable to national banks and their officers.

This fact, however, in nowise changes the rule of interpretation. It had been held to apply to the officers of national banks before it was made a part of chapter 12 of title IX of the Code, and it must of course be conclusively presumed that the legislators, in making this statute a part of chapter 12, did so with full knowledge of the construction which had been placed upon it by the supreme court of the state.

It is true the supreme court of Kansas, in the case of *State v. Menche*, 56 Kan., 77, held that a statute of that state, in some respects similar to the Iowa statute, was not intended by the Kansas legislature to apply to national banks, and *Commonwealth v. Ketner*, 92 Pa. St., 372, and *Allen v. Carter*, 119, Pa. St., 192, are cited by counsel as holding the same doctrine.

An examination of the Pennsylvania cases will, however, clearly disclose that the decisions of that court rest upon an entirely distinct principle; that is, that congress had already defined and provided adequate punishment for the offense of embezzlement by officers of national banks, and had thereby occupied that specific field of legislation. No reason existed therefore why the state, if it had the power, should legislate upon the subject.

No matter how highly we may regard the opinion of the supreme court of Kansas, it certainly cannot be claimed that its decision, in the case of *State v. Menche*, is authority in the case at bar. That court has held that the legislature of Kansas did not intend, that its statute against fraudulent banking should apply to national banks. Such holding is the law of the state of Kansas.

The supreme court of the state of Iowa held in the *State v. Fields*, and reaffirmed its decision in the case at bar, that the statute prohibiting fraudulent banking, was intended, by the Iowa legislature, to apply to the officers of national banks. Such holding is the law of Iowa, and, under the authorities cited, will control the construction of the Iowa statute by the federal courts.

We are therefore fully justified in saying, upon authority, principle, and the history of the legislative act, that the statute in question, must be held to apply to the officers of national banks,

as well as to banks organized under the laws of the state and to private corporations doing a banking business within this state.

We now reach the vital question involved in this case.

II.

Is the statute of the state of Iowa valid in so far as it applies to national banks, their officers and agents, conducting business in the state under the laws of congress?

It is the contention of the defendant in error, that the statute is valid as applied to national banks, their officers and agents; that the legislature of the state had power to enact it, and that the courts of the state have power to enforce it. That it is in the nature of a police regulation, having for its object the protection of the public from fraud.

The claim of the plaintiff in error is, that the authority given a national bank, by act of congress, to receive deposits, withdraws from the state the power to make the receipt of a deposit by a national bank, its officer or agent, a criminal offense under the statutes of the state, when such bank is insolvent, and known by such officer or agent to be insolvent.

It is said by counsel:

"Where an act is authorized to be done by a valid law of the United States, such act is thereby withdrawn from the operation of the criminal laws of the state; that such a law excludes any by the state upon the subject unless expressly permitted by the law of congress; and that the performance of such an act in pursuance of and as authorized by such law cannot be punished by the state as an offense against its laws."

The contention of the plaintiff in error may be stated as follows:

A state cannot punish an act which is authorized by a valid act of congress.

The receipt of deposits by the officers and agents of an insolvent national bank, known by them to be insolvent, is authorized by a valid law of congress.

Therefore a state cannot punish the officers and agents of a national bank for receiving deposits therein when such bank is insolvent and by them known to be insolvent.

The entire argument, of the plaintiff in error, upon this branch of the case, rests upon this proposition. If either of the premises upon which the conclusion is predicated is false, the conclusion must also be false.

It is assumed that the officers and agents of a national bank which is insolvent and known to be insolvent, are authorized by a valid law of congress to receive deposits in such bank.

This assumption is one of the premises upon which the argument of counsel is based. If it is false, then the entire structure resting upon it must fall.

To determine its truth or falsity, let us briefly inquire what a national bank is, and what its rights and duties are under the laws of congress.

Chapters 1 and 2 of title LXII of the Revised Statutes provide for the organization and commencement of business of national banking associations. Chapter 3 of the same title regulates the conduct of the business of the bank, and chapter 4 provides for dissolution, receivership, etc.

Upon complying with the provisions of chapter 1, a national banking association becomes a body corporate, and a certificate is issued to it by the comptroller of currency, under the provisions of sections 5168 and 5169 of the Revised Statutes. The form of the certificate approved by the treasury department is as follows:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., ...

WHEREAS, by satisfactory evidence presented to the undersigned, it has been made to appear that the ... . in the village of....., in..... county, ..., has been duly organized under and according to the requirements of an act of Congress entitled, "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act.

Now, therefore, I, ..., Comptroller of the Currency, do hereby certify that.....of ..... county, in said state, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office this ..... day of ....., ...

(SEAL) ....
Comptroller of the Currency.

When a national banking association has complied with the provisions of chapters 1 and 2 of title LXII of the Revised Statutes, and received from the comptroller of the currency the certificate of its organization, it is then entitled to transact a legitimate banking business at the place where the bank is located, under the authority of the laws of congress.

No certificate of the comptroller of the currency authorizing a national banking association to commence business, would be issued to an insolvent bank. Such certificate is issued to the bank because of its solvency and ability to carry on a legitimate banking business. The authority thereby conferred, to transact the business of banking, is based upon the fact that the bank is solvent. Whenever it becomes insolvent, its authority to continue business under such certificate must necessarily cease.

The fact that an insolvent bank holds the comptroller's certificate, authorizing it to transact a legitimate banking business, which was properly issued at the time the bank opened its doors, cannot and does not authorize it to continue business and to receive deposits a single instant after it becomes insolvent.

This proposition is based upon a well recognized and sound principle of law, which is, that the receipt of a deposit of money, by an insolvent bank, is a fraud. And no act of congress, or certificate of the comptroller of the currency, can authorize or legalize the commission of a fraud.

The position which a banker occupies in the business world is aptly defined in the case of *Meadowcraft v. The People*, 163, Ill., 65, where it is said:

"A banker is a dealer in capital—an intermediate party between the borrower and the lender—who borrows from one party and lends to another; and the business of banking is, among other things, the establishment of a common fund for lending money. And, as said by the supreme court of Wisconsin, in *Baker v. State*, 54 Wis., 268, a bank implies capital, and capital invites confidence. A man holding himself out as a banker thereby gives public proclamation that he has money, and property readily convertible into money, in his possession and subject to his control, and for that reason he may be safely

trusted; and his business not only affects himself as a banker, but every person who deals with him as such."

In *St. Louis, &c., R. Co. v. Johnson*, 133 U. S., 566, Mr. Chief Justice Fuller adopts the following language from the *Anonymous Case*, 67 N. Y., 598, as the opinion of this court:

"In the case of bankers, where greater confidence is asked and reposed, and where dishonest dealings may cause widespread disaster, a more rigid responsibility for good faith and honest dealing will be enforced than in the case of merchants and other traders;" and that "a banker who is, to his own knowledge, hopelessly insolvent, cannot honestly continue his business and receive the money of his customers; and although having no actual intent to cheat and defraud a particular customer, he will be held to have intended the inevitable consequences of his act, *i. e.*, to cheat and defraud all persons whose money he received, and whom he fails to pay before he is compelled to stop business."

In *Craigie v. Hadley*, 99 N. Y., 131, it was held, that it was a gross fraud, on the part of a bank, to permit a customer to make a deposit therein, when such bank was insolvent, and known by its officers to be insolvent.

The principle laid down in the New York cases has been fully recognized by this court in *St. Louis Ry. Co. v. Johnson*, *supra*.

Misrepresentation may consist as much in the concealment of what is true, where the duty of disclosure exists, as in the assertion of what is false. If one conceals a fact, material to a transaction, which it is his duty to disclose, knowing that the other party acts on the presumption that no such fact exists, it is as much a fraud as if the existence of such fact were expressly denied, or the reverse of it expressly stated.

The keeping of the bank open, and the conducting of its business in the usual manner by the plaintiff in error, constituted a continuing representation that it was solvent, upon which the public had the right to rely. If it was insolvent, and known to be insolvent by the officers who were charged with its management, the concealment of that fact from a person about to make a deposit would constitute a fraud.

The N. Y. Breweries Co. v. Higgins, 79 Hun., 250.

Wasson v. Hawkins, 59 Fed. Rep., 233.

In *Trust & Savings Bank v. Mfg. Co.*, 150 Ill., 340, it is said:

"The fraud alleged consists of the act of Shaffer & Co. as bankers in receiving the check on deposit after they had become insolvent, and with knowledge of their insolvency and their impending failure, thereby occasioning the loss to the petitioner of the amount of the deposit. That such act, if proved, constituted a fraud upon the depositor cannot be doubted, * * *"

In *First National Bank v. Strauss*, 66 Miss., 479, (14 Am. St. Repts., 581) it is said:

"Gattman & Co. were at the time irretrievably insolvent, the bank had been really insolvent for years, and at the time of the deposit by the claimant one of its members had absconded; the concern was tottering to fall, and it is inconceivable that the managing partners who remained in charge were not informed of its hopeless condition. The interval is as broad in law as in morals that separates the condition of him who, though involved in financial straights, has a *bona fide* hope or expectation of retrieving his situation, and prosecutes his business for the honest purpose of so doing, from that of him who, financially destroyed, conceals his own ruin and recklessly and fraudulently plunders the unwary and trusting who may be drawn into his toils."

In the case at bar the bank had been hopelessly insolvent for years. Its insolvency was known, to plaintiff in error, during all of that time. It was tottering to a fall; and yet its doors were kept open, its true condition was fraudulently concealed from depositors, and the plaintiff in error dishonestly took advantage of a credit induced by apparent prosperity, to obtain money from his depositors which he knew he never could repay. Such a transaction is not only contrary to law, but is repugnant to every principle of honesty and morality by which the commercial transactions of the world are governed.

Yet this is the character of business, and the kind of a transaction which is claimed, by the plaintiff in error, to be authorized by an act of congress.

In *Plumley v. Massachusetts*, 155 U. S., 461, it is said by Mr. Justice Harlan:

"The constitution of the United States does not secure to any one the privilege of defrauding the public."

It can be said, with equal force, that the act of congress which permits the organization of national banks does not secure to those associations, or to their officers or agents, the privilege of defrauding the public. Nor does the certificate of the comptroller of currency, which authorized a national bank to com-

mence business, confer upon such bank, or its officers, the right to commit a fraud upon those whom it induces to make deposits in the bank.

It is urged that national banks, organized under the acts of congress, are instruments designed to aid the government in an important branch of the public service, the object of which was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people, and facilitate the operation of the laws of the United States; that they derive their power to transact business wholly from the congress of the United States, and are not dependent upon the statute of any state for the right of conducting and carrying on their business; that congress has, by express enactment, undertaken to regulate the conduct of the business of national banks, and has made the comptroller of the currency a supervisory officer, with visitorial powers, to examine and ascertain their condition, and to determine whether they shall continue business, and when they shall receive deposits; that in the exercise of its powers congress has undertaken, by appropriate legislation, to regulate and control the conduct of the business of these banks; that by act of congress the will of the nation has intervened; and that the will of the nation, so exercised by act of congress, is exclusive, and the power or authority of the state, whatever it may be, must retire, and lie in abeyance until the proper occasion for its exercise shall recur.

This contention, of the plaintiff in error, is based upon the principles announced in *McCullough v. Maryland*, 4 Wheat., 316, as applied to national banks in *Farmers, etc., Nat. Bank v. Deering*, 91 U. S., 29, in which it is stated as follows:

"National banks organized under the act are instruments designed to be used in aid of the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them congress is the sole judge. Being such means, brought into existence for this purpose, and intended to be so employed, the states can exercise no control over them, nor in anywise affect their operation, except in so far as congress may see proper to permit. Anything beyond this is 'an abuse because it is the usurpation of a power which a single state cannot give.' Against the national will 'the states

have no power by taxation, or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.' The power to create carries with it the power to preserve. The latter is corollary of the former.

"The principle announced in the authorities is indispensable to the efficiency, the independence, and indeed to the beneficial existence of the general government; otherwise it would be liable in the discharge of its most important trust to be annoyed and thwarted by the will or caprice of every state in the union. * * *

"Whenever the will of the nation intervenes exclusively in this class of cases the authority of the state retires and lies in abeyance until a proper occasion for its exercise shall recur."

With the soundness of this principle we have no contention, and in a case to which it is applicable no question as to its controlling power can be raised.

That it is wholly inapplicable to the case at bar appears to us clear.

The limit to which the doctrine of *McCullough v. Maryland*, and *Bank v. Deering*, may be carried as against the legislative power of the states over national banks is clearly defined in *Bank v. Commonwealth*, 9 Wallace, 361, and in subsequent decisions of this court affirming the doctrine therein enunciated.

In *Bank v. Commonwealth* Mr. Justice Miller, speaking for the court, said:

"But it is urged that the banks being instrumentalities of the federal government, by which some of its important operations are conducted, cannot be subjected to such state legislation. It is certainly true that the Bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of *McCullough v. Maryland*, has been repeatedly affirmed by the court. But the doctrine has its foundation in the proposition that the right of taxation may be used in such cases as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the states, and it certainly cannot be maintained that banks or other corporations or instrumentalities of the government are to be wholly withdrawn from the operation of state legislation. The most important agents of the federal government are its officers, but no one will contend that when a man becomes an officer of the government he ceases to be subject to the laws of the state. The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the federal government are only exempted from state legislation, so far as that legislation may interfere with, or

impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states. The salary of a federal officer may not be taxed; he may be exempted from any personal service which interferes with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties. But he is subject to all the laws of the state which affect his family or social relations, or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In *McClellan v. Chipman*, 164 U. S., 356, it is said:

"Two propositions have been long since settled by the decisions of this court:

"First. National banks 'are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.' *National Bank v. Commonwealth*, 9 Wall., 362.

"Second. 'National banks are instrumentalities of the federal government created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiencies of these agencies of the federal government to discharge the duties for the performance of which they were created.' *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283.

"These two propositions, which are distinct, yet harmonious, practically contain a rule and an exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to dis-

charge the duties imposed upon them by the law of the United States."

In *Waite v. Dowley*, 94 U. S., 533, it is said:

"We have more than once held in this court that the national banks organized under the acts of congress are subject to state legislation, except where such legislation is in conflict with some act of congress, or where it tends to impair or destroy the utility of such banks, as agents or instrumentalities of the United States, or interferes with the purpose of their creation."

Does the statute of Iowa, which makes the receipt of a deposit by an insolvent national bank a crime, interfere with, impede, impair, or destroy the efficiency and utility of such bank in the performance of the functions by which it was designed to serve the government?

If it does not, then the acts of its officers, in receiving a deposit when the bank is insolvent, and known by them to be insolvent, is a proper subject for state legislation under the principle laid down by Mr. Justice Miller in *Bank v. Commonwealth*, and re-affirmed in the cases cited.

As we have shown, the receipt of a deposit by an insolvent bank, when its officers know it to be insolvent, is a fraud.

The statute of the state makes such fraud a crime.

Does a law, which only seeks to prevent the commission of a fraud, impair, impede, or destroy the efficiency and utility of a bank?

Can it be said that the object for which national banks were created by congress is to be attained by fraudulent means?

There can be but one answer to these questions.

A bank, which is an instrumentality of the federal government, cannot be made more efficient in the performance of the functions by which it was designed to serve that government, or of greater utility in aiding the government, in the administration of an important branch of the public service, by dishonesty and fraud.

No one will claim that officers of a national bank, should be guilty of perpetrating a fraud, in the performance of the functions by which the bank was designed to serve the government.

The doctrine contended for, by plaintiff in error, would put the federal government in a most ignominious position. Its logi-

cal conclusion is, that by an act of congress the federal government has authorized the perpetration of a fraud upon the people of a state, to further its ends and objects.

It is clear that no such position can be maintained. It is equally contrary to law and good morals.

The statute of the state does not, therefore, in anywise interfere with, impair, impede, or destroy the efficiency of a national bank in attaining the objects for which it was created. It does not conflict with, or impinge, any law of congress. It does not impede or delay, any of the powers of the United States government, in carrying out the purposes for which such banks were created.

The effect of the statute is, to require of the officers of all banks, within the state, a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them, better to accomplish the purposes and designs of the general government, and is an aid, rather than an impediment, to their utility and efficiency as agents and instrumentalities of the United States.

The act, therefore, cannot be held invalid upon the ground that it interferes with, impedes, or impairs the efficiency and utility of national banks as instrumentalities of the government.

In no case cited by counsel has this court announced a doctrine contrary to the principle for which we contend; and in no case decided by it has a principle of law been declared which is not in harmony with our position.

The language used in *Cook County National Bank v. United States*, 107 U. S., 445, and quoted in counsel's brief, was intended only to apply to a case, where a law-making power enacted a law which was repugnant to a former law, enacted by the same power. Under a familiar rule, the former law was held to yield to the latter, and, to the extent of the repugnancy, to be superseded by it.

What is said in that case as to a law embracing an entire subject and dealing with it in all of its phases, and thus withdraw the subject from the operation of a general law, was said

in reference to two repugnant statutes of the United States, and was not intended to cover, and does not determine, the question of the right of a state, to declare the fraudulent act of an officer of a national bank a crime, and to provide a punishment therefor.

A careful reading of this case will not disclose a single principle of law as therein enunciated, which is in conflict with the position we have taken upon this question.

The decision of this court in *Ohio v. Thomas*, 173 U. S., 276, was based strictly upon the principle that federal officers, who are discharging their duties in a state, and who are engaged in superintending the internal government and management of a federal institution, with the approval of congress, are not subject to the jurisdiction of the state in regard to those very matters of administration which are thus approved by federal authority.

Thomas was an officer of the federal government. He was engaged in superintending the internal government and management of a federal institution, under the lawful direction of its board of managers and with the approval of congress. What he did was strictly within his line of duty as such federal officer.

It is said, in that case, by Mr. Justice Peckham, speaking for the court:

"In asserting that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece of land, in opposition to the language of the act of congress ceding back the jurisdiction the United States received from the state. The government is but claiming that its own officers, when discharging duties under federal authority pursuant to and by virtue of valid federal laws, are not subject to arrest or other liability under the laws of the state in which their duties are performed.

"The claim is made that neither the board of managers nor the governor of the home can, through their officers or by himself, violate the statute law of a state having jurisdiction, when the acts constituting the infringement are not necessary for the government and management of the home for the purpose for which it was incorporated, or authorized by any act of the United States.

"This claim might be conceded and still the conviction of the appellee would be invalid, because we find in this record the authority of the United States for the act of the governor. The statutes above referred to, when taken in connection with the

admitted facts, show an appropriation by congress for the purchase of oleomargarine as part of the regular rations of the inmates of the home. The act of the governor in serving it was authorized by congress and it was therefore legal, any act of the state to the contrary notwithstanding."

In the case *In re Neagle*, 135 U. S., 1, Neagle was a federal officer and charged with the special duty of protecting the person and life of one of the judges of this court. In the performance of that duty he shot and killed Terry. In doing so, he was acting under the authority of the law of the United States as an officer thereof, and in the performance of his duty as such officer. Under the facts in that case, this court held that Neagle was not liable to answer in the courts of California for the killing of Terry, for the reason that he was a federal officer acting under the law of the United States and in the performance of his duty as such officer, at the time of the act.

In the case *In re Waite*, 81 Fed. Rep., 363, the question involved is stated by Judge Shiras as follows:

"Broadly stated, it involves the proposition whether the operations of the government of the United States in matters within its sole control, and which operations of necessity must be carried forward by means of officers and agents duly appointed, can be interferred with by criminal proceedings instituted in the state courts, and based upon acts done by such officers or agents within the scope of the duties imposed upon them. By this it is not meant to assert that because a person is an officer or agent of the federal government he is thereby excepted out from the jurisdiction of the state or the binding force of its laws. The mere fact that when the acts by him done were done he was an officer of the United States, charged with certain duties to that government, will not afford him immunity from prosecution under the laws of the state, nor will the mere fact that he claims that the acts done were within the line of his official duty afford him protection, if the acts are such as to show that the claimed immunity is a mere subterfuge, and that under no fair consideration of his official duty could he have assumed that he was acting in his official capacity when the acts complained of were done by him. But when an officer of the United States is charged with the performance of certain duties under the laws of the United States, and in the general performance thereof he does acts which it is claimed are in excess of his proper duty, or which are violative of the rights of other citizens, the question is whether a prosecution therefor can be sustained in the state courts, when it is apparent that the institution and maintenance thereof may interfere with the enforcement of the laws of the United States, or with the operations of that government."

This question, as stated by the learned judge, involves two propositions:

First. To exempt the person, against whom the state law is sought to be enforced, from its jurisdiction he must be the duly appointed agent of the United States, charged with the performance of certain duties under the laws of the United States, and that in the performance of such duties he does an act which is claimed to be in violation of the state law.

Second. It must be apparent that the enforcement of the state law, against such officer or agent, for the performance of the act done in his official capacity and under the authority and laws of congress, will interfere with the enforcement of the laws of the United States, or with the operations of that government.

The conclusion of Mr. Justice Shiras is stated in these words:

"Therefore, when it was made to appear to the district court of Howard county that it was sought in the case before it to hold Edward F. Waite liable for a criminal violation of the statutes of the state for acts by him done as a special examiner of pensions appointed under the laws of the United States, when he was engaged in the performance of the duties imposed upon him as an officer or agent of the United States, then it was made to appear to that court that it had no jurisdiction to further proceed in the case or to further restrain the liberty of the defendant therein."

In the case at bar the plaintiff in error was the president of a corporation organized for private pecuniary profit under the laws of congress. He was elected to his office by the directors of the corporation. His election to the office of president of a private corporation, although such corporation was organized under the authority of congress, did not make him an officer or agent of the federal government, nor exempt him from the jurisdiction of the state or from the operation of its laws.

In receiving a deposit, in the bank, at a time when it was insolvent, and known by him to be insolvent, he was acting in his capacity as a citizen of the state of Iowa, and not as an officer of the federal government; nor was he performing any duty imposed upon him by law of congress.

The distinction between the facts in the case at bar, and those involved in *Ohio v. Thomas*, is clear and well defined. In one, a federal officer was discharging his duties under the authority

of the United States, pursuant to and by virtue of federal laws. In the other, a citizen of a state, who was not an officer or agent of the federal government, and who was not discharging any duty imposed upon him by a federal law, was perpetrating a fraud by receiving a deposit of money in an insolvent bank.

The distinction between the cases *In re Naegle* and *In re Waite* and the one at bar is equally clear and well defined. The conditions upon which the decisions in those cases rest, do not exist here. The plaintiff in error was not an officer or agent of the government. He was not performing an act under the authority of or pursuant to the laws of the United States. His prosecution under the state law for the perpetration of a fraud, committed against the laws of the state, cannot and does not interfere with the enforcement of the laws of the United States or the operations of that government.

No decision of this court goes beyond the principle announced in these cases, and it is unnecessary to occupy the time in a review of the other cases cited by counsel, and in showing the clear distinction which exists between the principles of law laid down therein and those which govern the case at bar.

The claim, of the plaintiff in error, that, because a national bank is lawfully incorporated under the laws of the United States, which prescribe the manner of conducting its business, of winding up its affairs, and the punishment for certain illegal acts of its officers, the entire property of the bank and all of the acts of its officers are thereby entirely removed from the jurisdiction of the state, is so far reaching, and so subversive of the elementary principles of our system of government, that it cannot be sustained. The doctrine contended for, if carried to its legitimate and logical conclusion, would deprive the state of its entire governmental powers.

If congress has power to establish national banks, and thereby withdraw the property and persons engaged in the management of the business of such banks, wholly from state control and taxation, the same implied power would permit congress to incorporate railways, and to withdraw the property thereof and all persons engaged in transacting the business of such railways,

from the control of the laws of the state. It would enable congress to incorporate manufacturing companies, for the purpose of supplying the army and navy with material requisite for their equipment. It would justify congress in incorporating great agricultural companies, for the purpose of purchasing lands and raising products thereon, to feed and maintain the army and navy of the United States.

All of the property of such companies, and all of the persons engaged in carrying on their business, would, upon the theory of counsel, be withdrawn from the operation of the police laws of the state and from its taxing power. The entire state might be dominated and controlled by men in the employ of such corporations, who were not amenable to the state laws, and the larger part of all of the property within the state be withdrawn from taxation.

If the reasoning of counsel is sound, the property within the boundaries of the state might, by the means suggested, be withdrawn from state taxation to such an extent that the state government must fall for want of adequate revenue. All of the powers reserved to the state could be absorbed and supplanted by the general government.

That such a condition is not likely to occur does not weaken the force of the argument, as it is but the logical conclusion of the theory advanced.

The doctrine contended for by the learned counsel is contrary to the fundamental principles which underlie the foundation of our government. The states are original sovereign powers, and as such retain every sovereign right not delegated to the general government. They are the foundation upon which the federal government rests.

While it may be said that the existence of the federal government is not necessary to the existence of the states, it is clearly true that the existence of the states is absolutely necessary to the existence of the federal government, as at present constituted. The states disunited might continue to exist. Without the states in union there could be no such political body as the United States.

Lane County v. Oregon, 7 Wall., 76.

Any theory, therefore, which, in its logical conclusion, leads to the destruction of a state government, and of the sovereign right of that state to exercise control over the persons and property within its boundaries, equally tends to the destruction of the federal union.

No doctrine can, therefore, be recognized by this court as a sound principle of law, which takes from the state its sovereign rights and powers; as the destruction of such rights and powers is a menace to the existence of the national government.

In *Railroad Co. v. Peniston*, 18 Wall., 31, it is said:

"The states are, and they must ever be, co-existent with the national government. Neither may destroy the other. Hence the federal constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the state, or prevent their efficient exercise."

Among the powers reserved by the state is the right to levy and collect a tax upon all property and persons within its jurisdiction, and to control its internal affairs by its police powers. While the right of the state to exercise these powers is not denied, it is contended that the general government may remove citizens and property within the territorial jurisdiction of the state from the operation of its laws, and leave neither property nor citizens upon which the laws of the state can operate.

The principle contended for carried to its logical conclusion would leave but the shadow of a form of state government, with neither vitality nor substance. While that shadow of a form of state government might exist, the state itself in vitality and power would be absolutely destroyed by the federal government; and the principle stated by Mr. Justice Strong, in *Railroad Co. v. Peniston*, "that the states are, and they must ever be, co-existent with the national government," would be completely overturned.

"The constitution in all its provisions looks to an indestructible union, composed of indestructible states."

Texas v. White, 7 Wall., 725.

III.

Has the federal government, by act of congress, intervened and occupied this field of legislation, to the exclusion of the power of the state to legislate upon the subject?

In *Gilman v. Philadelphia*, 3 Wall., 730, it is said by Mr. Justice Swayne:

"The states may exercise concurrent or independent power in all cases but three.

"1. Where the power is lodged exclusively in the federal constitution.

"2. Where it is given to the United States and prohibited to the states.

"3. Where, from the very nature and subjects of the power, it must necessarily be exercised by the national government exclusively."

It is clear that the power sought to be exercised by the state, in enacting the statute under which the indictment was found, does not fall within either of the first two classes.

Is the subject of the state legislation, and the power sought to be exercised by the state in enacting and enforcing such legislation, a power which, from the nature and subject thereof, must necessarily be exercised by the national government exclusively?

The statute affects all persons within its territorial jurisdiction who fall within the class named in its provisions. The act prohibited by it is one done within the territorial jurisdiction of the state, and by persons within its legislative jurisdiction. The nature and subject of the legislative power sought to be exercised falls within the powers of the state, rather than those of the national government.

If we concede the power of the federal government to step within the territorial jurisdiction of a state and declare the act of a citizen of the state, in receiving a deposit in an insolvent bank, to be a crime, it is certain that no attempt has ever been made by congress to do so. The United States government has never occupied that field of legislation.

The argument of council based upon the authority of *Prigg v. Pennsylvania*, 16 Pet., 539, falls far short of holding the doctrine contended for. In that case a law of Pennsylvania, making it a

criminal offense to take and remove from the state a fugitive slave, was held to be void because repugnant to a provision of the federal constitution upon that subject. The question of the federal government having taken possession of a field of legislation to the exclusion of a state, did not arise in the case, nor was such question passed upon by the court.

It is true that the supreme court of Michigan in *People v. Fonda*, 62 Mich., 401, held that because congress had, by the provisions of section 5209 of the revised statutes, made the embezzlement of the funds of a national bank by an agent or officer of such a bank a crime, such act of congress removed the subject from the power of the state legislature, and that an officer of a national bank, guilty of embezzling its funds, could not be punished under a statute of that state.

The decision of the Michigan court, however, stands practically alone upon this question, and as it seems to us, it fell into the error of assuming that embezzlement, larceny, forgery, falsification of records and other recognized crimes of that character when committed by officers of national banks, are exclusively within the jurisdiction of the federal courts, because they are punishable under the laws of congress.

The holding in the Michigan case is in direct conflict with the decisions of this court and those of several of the states.

In *Cross v. North Carolina*, 132 U. S., 139, it is said:

"The argument in behalf of plaintiffs in error fails to give effect to the established doctrine that the same act or series of acts may constitute an offense equally against the United States and the state subjecting the guilty party to punishment under the laws of each government. This doctrine is illustrated in *United States v. Marigold*, 9 How., 560-9; *Fox v. Ohio*, 5 How., 410-413; *Moore v. Illinois*, 14 How., 13-19 and *ex parte Siebold*, 100 U. S., 371-390; in the first of which cases it was said that 'the same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the state and federal governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each.' If it were competent for congress to give exclusive jurisdiction to the courts of the United States of the crime of falsely making or forging promissory notes, purporting to be executed by individuals, and made payable to or at a national bank, or of the crime of uttering or publishing as true any such falsely made or forged notes, it has not done so. Its legislation does not assume to restrict the authority,

which the states have always reserved, of punishing in their own tribunal the crime of forging promissory notes, and other commercial securities executed by private persons, and used for purposes of private business. The forgery of such an instrument is none the less injurious to the welfare of the people of a state because they happen to be made payable to or at banking associations which come into existence under the authority of the United States. The forgery may have been committed in order that the instrument forged might thereafter become the basis of false entries upon the books of the bank. But that circumstance cannot defeat the authority of the state, charged with the duty of protecting its own citizens, from punishing the forgery as, in itself, a distinct, separate offense, committed within its limits and against its laws."

In *Teal v. Felton*, 12 How., 284, this court sustained a judgment of the court of appeals of New York against a postmaster for refusing to deliver a newspaper under the instructions of the postmaster general. The court held that, notwithstanding the unauthorized instructions of his superior officer, he was liable in trover under the laws of New York. On page 292 this court quotes with approval the language of Mr. Justice Wright of the New York court, as follows:

"After citing the second section of the third article of the constitution, he adds, 'This is a mere grant of jurisdiction to the federal courts, and limits the extent of their power, but without words of exclusion or any attempt to oust the state courts of concurrent jurisdiction in any of the specified cases in which concurrent jurisdiction existed prior to the adoption of the constitution. The apparent object was not to curtail the powers of the state courts, but to define the limits of those granted to the federal judiciary.' We will add that the legislation of congress immediately after the constitution was carried into operation, confirms this conclusion of the learned judge."

In *Moore v. People*, 14 How., 13, Mr. Justice Grier said:

"Every citizen of the United States is also a citizen of a state or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may also be a gross breach of the peace of the state, a riot, assault, or a murder, and subject the same person to a punishment, under the state laws, for a misdemeanor or felony."

In *Commonwealth v. Tenny*, 97 Mass., 50, it was held that a person converting the money or bonds belonging to a national

bank, being a clerk therein, was guilty of embezzlement under the state law.

In *Hoke v. The People*, 122 Ill., 511, it was held that the state court had jurisdiction to try and punish a person guilty of forging a draft purporting to have been drawn by a national bank, although such person was a clerk in the bank.

In *Commonwealth v. Luberg*, 94 Pa. St., 85, it was held that the teller in a national bank may be convicted in a state court upon an indictment charging him with fraudulently making false entries, reports and statements of the bank with intent to injure and defraud the bank. This case, which was decided after the case of *State v. Ketner*, 92 Pa. St., 372, cited by counsel, contains no reference to the latter case, and it appears to overrule the doctrine announced in the *Ketner* case.

The punishment of embezzlement, larceny, counterfeiting, and crimes of like character, if committed by officers of national banks, does not necessarily, because of the character of such acts, fall within the powers which must be exercised by the national government to the exclusion of the state. This is clearly a field of legislation within which the general government and the state may exercise concurrent power.

Congress has authorized the organization of national banks under its laws. It has regulated the conduct of their business. It has made embezzlement, wilful appropriation of money, the issuance, without authority, of certificates of deposits, orders or bills of exchange, and the falsification of its books and records, offenses under the federal statute.

It has never attempted to go beyond this field of legislation.

The power to punish an officer of a national bank for the commission of a fraud in receiving deposits when the bank is insolvent, and known by him to be insolvent, has been left by congress wholly to the states. It is a field of legislation which has not been entered or occupied by the federal government.

The act of receiving a deposit in an insolvent bank is a fraud, committed against the people of the state in which the bank is located. It is none the less injurious to their welfare because done by an officer of a national bank. It forms no part of the

legitimate and lawful business of the bank regulated by act of congress.

The power to punish such fraudulent act, therefore, falls within the powers which the states have always reserved; among which is the right of every state to punish in its own tribunals the perpetrator of a crime, committed against its own citizens, within its territorial and legislative jurisdiction.

The power to define and punish a fraud of this character does not from its nature fall within the powers which must necessarily be exercised by the national government exclusively, but, as we shall see, comes within the police powers which the state may at all times rightfully exercise.

IV.

Is the enactment of the statute a proper exercise of the police power of the state?

Mr. Cooley in his work on Constitutional Limitations (6th ed.), 704, says:

"The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Upon page 706 of the same work it is said:

"In the American constitutional system the power to establish the ordinary regulations of police has been left with the individual states, and it cannot be taken from them, either wholly or in part, and exercised under regulation of congress. Neither can the national government, through any of its departments or officers, assume any supervision of the police regulations of the states. All that the federal authority can do is to see that the states do not, under cover of this power, invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the constitution has confided to the nation, or deprive any citizen of rights guaranteed by the federal constitution."

These statements of the writer are fully supported by the decisions of this court:

United States v. De Witt, 9 Wall., 41.
License Cases, 5 How., 504.
Passenger Cases, 7 How., 283.
Slaughter House Cases, 16 Wall., 36.
Patterson v. Kentucky, 97 U. S., 503.

Nor can the police power of a state be alienated even by an express grant. It is a power and responsibility which legislatures cannot divest themselves of, if they would.

Thorp v. R. & B. R. R. Co., 27 Vt., 149.
Beer Co. v. Mass., 97 U. S., 33.
Stone v. Mississippi, 101 U. S., 814.

The fourteenth amendment to the federal constitution does not take from the states the police powers reserved at the time of the adoption of the constitution.

Slaughter House Cases, 16 Wall., 36.
Barbier v. Connolly, 113 U. S., 27.
Mugler v. Kansas, 123 U. S., 623.

In *United States v. Cruikshank*, 92 U. S., 555, it is said:

"The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of these principles if within its power. That duty was originally assumed by the states; and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment (the fourteenth) guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty."

In *State v. Noyes*, 47 Me., 189, it is said:

"With the legislature the maxim of law '*salus populi suprema rex*,' should not be disregarded. It is the great principle on which the statutes for the security of the people are based. It is the foundation of criminal law, in all governments of civilized countries, and of other laws conducive to the safety and consequent happiness of the people. This power has always been exercised, and its existence cannot be denied. How far the provisions of the legislature can extend, is always submitted to its discretion, provided its acts do not go beyond the great principle of securing the public safety; and its duty to provide for the public safety, within well defined limits and with discretion, is imperative. * * * All laws for the protection of lives, limbs, health and the quiet of the person, and for the security of all property within the state, fall within this general power of the government."

In *Lake View v. Rose Hill Cemetery*, 70 Ill., it is said:

"The police power of a state is co-extensive with self-protection, and is not inaptly termed, 'The law of overruling necessity.' It is that inherent plenary power in the state which enables it to prohibit all things hurtful to the welfare and comfort of society."

As has been shown in another division of this argument, the receipt of a deposit by an officer of an insolvent bank, when such bank is by him known to be insolvent, is a fraud. And it is not only the right of the state, but it is its duty to protect its citizens in the enjoyment of their property and against fraudulent deprivation thereof.

"Fraud is a trespass upon the rights of others, and may therefore always be punished."

Teidman's Limitations of Police Powers, 291.

It is argued by counsel for plaintiff in error, that the right of a bank to accept deposits is essential to enable it to continue business; that no bank can successfully conduct a banking business for any length of time and supply the demands of congress without such right, and the actual exercise thereof; that congress well understood this, and when it conferred upon national banks the authority to receive deposits to an unlimited amount it must have intended them to exercise the right untrammeled by any action of the state; that to deny to a bank the right to receive deposits is to deny it the right to continue business; that to impose conditions upon its right to receive deposits is to impose conditions upon its right to continue business.

The fallacy of this argument is in the assumption that an insolvent bank has a right to continue business, and that the statute of the state which makes it a crime for an insolvent bank to receive a deposit imposes a condition upon such right.

It is a well settled rule of law that an insolvent bank has no right to continue business or to receive deposits. When it becomes insolvent it is the duty of its officers to at once close its doors, decline deposits, and discontinue business.

Anonymous Case, 67 N. Y., 598.

Craigie v. Hadley, 99 N. Y., 133—52 Am. Rep., 9.

St. Louis, &c., R. Co. v. Johnson, 133 U. S., 566.

Am. Trust, &c., Bank v. Gueder, &c., Mfg. Co., 150 Ill., 336.

Meriden First Nat. Bank v. Straw, 56 Miss., 479—14 Am. St. Rep., 579.

The state law, therefore, which makes it a crime for an officer of a national bank to receive a deposit, under circumstances which amount to a fraud, does not deny to the bank any right which it has under the law of congress to receive deposits, nor does it deny to such bank any right which it has under such law to continue business. It imposes no conditions whatever upon the right of the bank to continue to transact a legitimate and lawful banking business.

It must be conceded that the state has the right to protect its citizens from fraud, whether perpetrated by an officer of a national bank, or by any other person within its territory; and when such officer goes beyond the rights which have been conferred upon him by law of congress, and performs an act which is a fraudulent trespass upon the rights of others, the power of the state to define and punish such fraudulent act is beyond question.

The fact that a state law, which seeks to punish fraudulent acts of this character, has the effect of closing the doors of an insolvent national bank, and thereby preventing a repetition of the fraud, is no argument against the exercise of the police power.

The doors of the bank are not closed, because the state has enacted a law which in any wise interfers with the transaction of its business as authorized by congress, or which impedes or impairs its efficiency as an instrumentality of the general government, but because the bank itself is insolvent and has no right to continue business.

Our position upon this question cannot be more cogently stated, than by quoting the language of the learned judge of the state court, in the case of the *State v. Fields*, 98 Iowa, 748:

"This statute is in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers. The mere fact that in violating the law of the state the defendant performed an act pertaining to his duty as an officer of the bank does not in any manner interfere with

the proper discharge of any duty he owes to any power, state or federal. Surely it was not intended by any act of congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons. National banks are organized, and their business pursued for private gain, and we can conceive of no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking."

The supreme court of Mississippi, in a case precisely like the one at bar, reached the same conclusion as the Iowa court as to the validity of a statute of this character, after a thorough investigation of the questions involved.

State v. Bardwell, 72 Miss., 535.

V.

Does the statute unjustly discriminate against banks and their officers and agents, and deny them equal protection under the laws of the state?

It is urged that the statute is repugnant to the fourteenth amendment of the constitution of the United States, and for that reason void.

It is contended that the legislature of the state has no authority to say that a bank, or a person doing a banking business, shall not receive a deposit of money when insolvent, when such right is not denied to other insolvent persons, and that the law denies to persons conducting a banking business the right of private contract, when insolvent, that is not denied to others, and for that reason unjustly discriminates against banks and persons conducting a banking business, and deprives them of the equal protection of the laws.

What is said in another branch of this argument in reference to the character of the business transacted by banks, is equally applicable to the question under consideration, and may properly be restated here:

"A banker is a dealer in capital,—an intermediate party between the borrower and lender,—who borrows from one party and lends to another, and the business of banking is, among other things, the establishing of a common fund for lending money. And as is said by the supreme court of Wisconsin in *Baker v. State*, 54 Wis., 268, a bank implies capital, and capital invites confidence. A man holding himself out as a banker thereby gives public proclamation that he has money, and

property readily convertible into money, in his possession and subject to his control, and for that reason he may be safely trusted, and his business not only affects himself as a banker, but every person who deals with him as such."

Meadowcraft v. People, 163 Ill., 65.

"In the case of bankers, where greater confidence is asked and reposed, and where dishonest dealings may cause widespread disaster, a more rigid responsibility for good faith and honest dealings will be enforced than in the case of merchants and other traders."

The Anonymous Case, 67 N. Y., 598.

St. Louis, &c., R. Co. v. Johnson, 133 U. S., 566.

Banks and bank officers have always been considered proper subjects of legislation because of their intimate and confidential relations to the people. They deal exclusively in money and credits, and their entire business rests upon the confidence of the public in their honesty and integrity. The relation which they sustain to their patrons is very nearly that of a fiduciary character.

The subject of banks and bankers is a natural classification for legislative purposes, and if the law bears equally upon all persons who fall within the classification it is valid, and does not contravene the provisions of the fourteenth amendment.

It is said by Mr. Cooley in his work on Constitutional Limitations, 6th Ed., 479:

"Laws public in their objects may, unless express constitutional provision forbids, be either general or local in their application; they may embrace many subjects; any one of them may extend to all citizens or be confined to particular classes, as minors or married women, bankers or traders, and the like."

Citing:

Iowa R. R. Land Co. v. Soper, 39 Iowa, 112.

Matter of Goodell, 39 Wis., 232.

Commonwealth v. Hamilton Mfg. Co., 120 Mass., 383.

The same author further says:

"These discriminations are made constantly, and the fact that the laws are of local and special operation only is not supposed to render them obnoxious in principle. The legislature may also deem it desirable to prescribe rules for the several occupations and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or bankers, may require special statutory

regulation for the general benefit, * * * If the laws be otherwise unobjectionable all that can be required in these cases is that they be general in their application to the class or locality to which they apply; and they are then public in their character, and of their propriety and policy the legislature must judge."

Cooley on Constitutional Limitations, 6th Ed., 480–81.

Equal protection under the constitution of the United States of the right to contract is not denied whenever the law operates alike on all persons and property similarly situated; and legislation limited as to business or territory does not infringe upon the constitutional right of equal protection and right of contract, where all persons subject to it are treated alike under like circumstances and conditions.

Munn v. Ill., 94 U. S., 113.
Walston v. Neven, 123 U. S., 578.
Barbier v. Connolly, 113 U. S., 32.
Hayes v. Missouri, 120 U. S., 68.
Mo. Pac. R. Co. v. Mackey, 127 U. S., 205.
Minn. & St. L. R. Co. v. Herrick, 127 U. S., 210.
State v. Schemmer, 10 L. R. A., 135.
Vt. Loan & Trust Co. v. Whithed, 49 N. W. R., 318.
State v. Moore, 104 N. C., 714.
Ex parte Swan, 96 Mo., 44.

The statute under consideration does not go so far as to attempt to regulate the business of banks. It simply makes the fraudulent acts of persons within the state an offense which is punishable under the law. It is general and uniform because every person who is brought within the relations and circum stances specified is affected by the law. It operates alike upon all persons who fall within the class to which it is applicable. The class is a natural and not an arbitrary one. The law does not therefore infringe upon the constitutional right of equal protection or right of contract.

In conclusion it is most respectfully submitted:

That it is within the power of the state to enact the statute in question; that it is applicable to national banks, their officers

and agents, conducting business within the state; and that the judgment of the state court holding the statute valid, and the plaintiff in error amenable thereto, should be by this court affirmed.

CHARLES W. MULLAN,
Attorney-General of Iowa,
for Defendant in Error.

Supreme Court of the United States.

No. 92.—October Term, 1902.

James H. Easton, Plaintiff in Error, vs. The State of Iowa. } In error to the Supreme Court of the State of Iowa.

[February 2, 1903.]

In 1898, in the District Court of Wenneshiek County, State of Iowa, James H. Easton was indicted, tried and found guilty, and sentenced to imprisonment in the penitentiary of Iowa at hard labor for a term of five years, under the provisions of a statute of that State, for the offense of having received, as president of the First National Bank of Decorah, Iowa, a deposit of one hundred dollars in money in said bank, at a time when the bank was insolvent and when such insolvency was known to the defendant.

At the trial it was contended, on behalf of the defendant, that the statute of Iowa, upon which the indictment was found, did not, and was not intended to apply to national banks, organized and doing business under the national bank acts of the United States, or to the officers and agents of such banks; and that, if the State statute should be construed and held to apply to national banks and their officers, the statute was void in so far as made applicable to national banks and their officers. Both these contentions were overruled by the trial court, and thereupon an appeal was taken to the Supreme Court of the State of Iowa, and by that court, on April 12, 1901, the judgment of the District Court was affirmed. The cause was then brought to this court by a writ of error allowed by the Chief Justice of the Supreme Court of Iowa.

Mr. Justice Shiras delivered the opinion of the Court.

Those portions of the Iowa statute whose validity is the question in this case consist of sections 1884 and 1885 of the code of that State, and are in the following terms:

"Sec. 1884. No bank, banking house, exchange broker, deposit office, firm, company, corporation or person engaged in the banking, brokerage, exchange or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States Treasury notes or currency, or other notes, bills, checks or drafts, or renew any certificate of deposit.

"Sec. 1885. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member or person knowing of such insolvency,

who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment."

At the trial evidence was adduced tending to show, and the jury found, that the defendant, being engaged in the banking business, as an officer, to wit, president of the First National Bank of Decorah, on the 21st day of August, A. D. 1896, did, as president of said bank, receive and accept on deposit in said bank the sum of one hundred dollars in lawful paper money and of the value of one hundred dollars, from one John French, the bank being then and there insolvent, and the defendant then and there well knowing that the said bank was insolvent.

It will be observed that national banks or banking associations are not specifically named in the statute; and it was hence argued on behalf of the defendant, that such institutions are not within the enactment. As, however, the State courts, following a previous decision of the Supreme Court of Iowa, in the case of *State* v. *Field*, (98 Iowa, 748,) held that the statute was applicable to all banks, whether organized under the laws of the State or the acts of Congress, we must accept that construction as correct, and confine our consideration to the question whether, as so construed, the act is within the jurisdiction of the State.

It is obvious that the two sections of the statute, above quoted, must be read together as one enactment. If section 1884, regarded as applicable to national banks, is a valid exercise of power by the State, then the penalties declared in section 1885 can be properly enforced; but if section 1884 must be held invalid as an attempt to control and regulate the business operations of national banks, then the penal provisions of section 1885 cannot be enforced against their officers. In other words, the validity of the mandatory and of the penal parts of the statute must stand or fall together.

What, then, is the character of a State law which forbids national banks, when insolvent, from accepting or receiving on deposit, with or without interest, any money, bank bills or notes, United States Treasury notes or currency, or other notes, bills, checks or drafts, or renewing any certificate of deposit?

The answer given by the Supreme Court of Iowa to this question is as follows:

"The acts of Congress provide no penalty for the fraudulent receiving of deposits, and the statute under consideration operates upon the person who commits the crime. And it is not a material question to determine whether it will be necessary to investigate the financial condition of the

bank to prove that the bank was insolvent when the deposit was received. This statute is in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers. The mere fact that in violating the law of the State the defendant performed an act pertaining to his duty as an officer of the bank does not in any manner interfere with the proper discharge of any duty he owes to any power, State or Federal. Surely, it was not intended by any act of Congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons. National banks are organized and their business prosecuted for private gain, and we can conceive of no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking."

We think that this view of the subject is not based on a correct conception of the Federal legislation creating and regulating national banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of State legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain. The principles enunciated in *McCullough* v. *Maryland*, (4 Wheat. 425,) and in *Osborne* v. *United States Bank*, (9 Wheat. 738,) though expressed in respect to banks incorporated directly by acts of Congress, are yet applicable to the later and present system of national banks.

In the latter case it was said by Chief Justice Marshall:

"The bank is not considered as a private corporation whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or persons having no political connection with the government, is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court in *McCullough* v. *Maryland* is founded on, and sustained by, the idea that the bank is an instrument which is necessary and proper for carrying into effect the powers vested in the government of the United States."

A similar view of the nature of banks organized under the national bank laws has been frequently expressed by this court. Thus, in *Farmers' National Bank* v. *Deering*, (91 U. S. 29,) it was said:

"National banks organized under the act are instruments designed to be used in aid of the government in the administration of an important branch of the public service. They are means appropriate to that end,"

Such being the nature of these national institutions, it must be obvious that their operations cannot be limited or controlled by State legislation, and the Supreme Court of Iowa was in error when it held that national

banks are organized and their business prosecuted for private gain, and that there is no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking. Nor is it altogether true, as asserted by that court, that there is no act of Congress prohibiting the receipt of deposits by national banks or their officers, when a bank is insolvent. It is true that there is no express prohibition contained in the Federal statutes, but there are apt provisions, sanctioned by severe penalties, which are intended to protect the depositors and other creditors of national banks from fraudulent banking. It is not necessary to quote at length those provisions, but it will be sufficient to say that banks organized under the national bank act are authorized to make contracts; to prescribe, by its board of directors, by-laws regulating the manner in which their general business shall be conducted, and the privileges granted by law exercised and enjoyed; to exercise by its board of directors, or duly authorized officers, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes and drafts, bills of exchange; by receiving deposits; by buying and selling exchange; by loaning money on personal security. And they are required to deposit with the Treasurer of the United States, as security for their circulating notes, United States bonds in an amount not less than one-fourth of its capital; to report to the Treasurer of the United States twice each year the average amount of its deposits, and to pay to said Treasurer each half year a tax upon such deposits; and to make to the Comptroller of the Currency not less than five reports during each year, (and special reports as often as he may require,) according to such form as he may require, verified by the oath or affirmation of the president or cashier, which reports shall exhibit in detail the resources and liabilities of the association. The Comptroller is directed to appoint suitable persons to make examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and in doing so to examine any of the officers or agents thereof, and to make a full and detailed report of the the condition to the Comptroller. Whenever the Comptroller becomes satisfied of the insolvency of such bank he may, after due examination of its affairs, appoint a receiver, who shall take possession of the assets of the association, wind up its affairs, and make ratable distribution of its assets. And severe penalties are imposed upon any officer or agent of such association who violates any of the provisions of the national bank act.

It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute.

It is argued by the learned Attorney General on behalf of the State of Iowa that "the effect of the statute of Iowa is to require of the officers of all banks within the State a higher degree of diligence in the discharge of

their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them better to accomplish the purposes and designs of the general government, and is an aid, rather than impediment, to their utility and efficiency as agents and instrumentalities of the United States."

But we are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities.

Nor can we concede that by such legislation of a State, as was attempted in this instance, the affairs of a national bank, or the security of its creditors, would be advantageously affected. The provision of the State statute is express that it is the duty of the officers of the bank, when they know it is insolvent, to at once suspend its active operations; for it is obvious, that to refuse to accept deposits would be equivalent to a cessation of business. Whether a bank is or is not actually insolvent may be, often, a question hard to answer. There may be good reason to believe that, though temporarily embarrassed, the bank's affairs may take a fortunate turn. Some of the assets that cannot at once be converted into money may be of a character to justify the expectation that, if actual and open insolvency be avoided, they may be ultimately collectible, and thus the ruin of the bank and its creditors be prevented. (*McDonald* v. *Chemical Nat. Bank*, 174 U. S. 610.) But under the State statute, no such conservative action can be followed by the officers of the bank except at the risk of the penalties of fine and imprisonment. In such a case the provisions of the Federal statute would permit the Comptroller to withhold closing the bank and to give an opportunity to escape final insolvency. It would seem that such an exercise of discretion on the part of the Comptroller would, in many cases, be better for all concerned than the unyielding course of action prescribed by the State law. However, it is not our province to vindicate the policy of the Federal statute, but to declare that it cannot be overridden by the policy of the State.

Similar legislation to that of the State of Iowa has been considered and disapproved by the Supreme Courts of several of the other States.

Thus in *Commonwealth* v. *Ketner*, (92 Penn. St. 372,) one Torrey was indicted and found guilty under a charge that, as the cashier of the First National Bank of Ashland, organized under the laws of the United States, he had embezzled the moneys of the said bank contrary to the form of the act of assembly of the State of Pennsylvania, prescribing a penalty of

fine and imprisonment. A writ of *habeas corpus* was allowed by the Supreme Court of the State, and the accused was discharged. That court, having quoted the acts of assembly relied on, said:

"We are spared further comment upon these acts, for the reason that they have no application to national banks. Neither of them refers to national banks in terms, and we must presume that when the legislature used the words 'any bank' that it referred to banks created under and by virtue of the laws of Pennsylvania. The national banks are the creatures of another sovereignty. They were created and are now regulated by the acts of Congress. When our acts of 1860 and 1861 were passed there were no national banks, nor even a law to authorize their creation. When the act of 1878 was passed, Congress had already defined and punished the offense of embezzlement by the officers of such banks. There was therefore no reason why the State, even if it had the power, should legislate upon the subject. Such legislation could only produce uncertainty and confusion, as well as a conflict of jurisdiction. In addition, there would be the possible danger of subjecting an offender to double punishment, an enormity which no court would permit, if it had the power to prevent it. An act of assembly prescribing the manner in which the business of *all* banks shall be conducted, or limiting the number of the directors thereof, could not by implication be extended to national banks, for the reason that the affairs of such banks are exclusively under the control of Congress. Much less can we, by mere implication, extend penal statutes to such institutions. The offense for which the relator is held is not indictable, either at common law or under the statutes of Pennsylvania. We therefore order him to be discharged."

In *Allen's Appeal*, (119 Pa. St. 192,) the question was whether a State law, which forbade "any cashier of any bank from engaging, directly or indirectly, in the purchase or sale of stock, or in any other profession, occupation or calling other than his duty as cashier," and which declared the same to be a misdemeanor, was applicable to the cashier of a national bank, and it was held that it was not so applicable, the court saying, among other things:

"The national banking act and its supplements create a complete system for the government of those institutions. Conceding the power of Congress to create this system, we are unable to see how it can be regulated or interfered with by State legislation. The State act, if applied to national banks, imposes a disqualification upon cashiers of those institutions where none has been imposed by Congress. If the State may impose one qualification upon the cashiers, why not another? If upon the cashier, why not upon the president or other officer? Nay, further, suppose the legislature should declare that no person should be a bank director unless he has arrived at fifty years of age, or should be the owner of one hundred shares of stock, could we apply such an act to national banks? If so, such institutions would have a precarious existence. They would be liable to be interfered with at every step, and it might not be long before the whole national banking system would have to be thrown aside as so much worthless lumber."

People v. *Fonda*, (62 Mich. 401,) was a case wherein a clerk of a national bank was prosecuted in a State court and found guilty of larceny and embezzlement of the funds of the bank under the statute of the State. But it was held by the Supreme Court of the State that the offense was within the laws of the United States, and that, accordingly, the State court was without jurisdiction. It was said by the court, in view of section 711 of chapter 12 of the Revised Statutes of the United States, in the following terms: "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States: First, of all crimes and offenses cognizable under the authority of the United States;" that, Congress, by law, created the national banking system, and provided for its internal workings, and prescribed a punishment for the offense charged against the defendant. It seems clearly the case is one falling within section 711 above quoted, and that by the Federal law itself the jurisdiction of the State is expressly excluded. Chancellor Kent, in his commentaries, (1 Com. 400,) says: "In judicial matters the concurrent jurisdiction of the State tribunals depends altogether upon the pleasure of Congress, and may be revoked and extinguished whenever they think proper, in every case in which the subject matter can constitutionally be made cognizable in the Federal courts; and, without an express provision to the contrary, the State courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally over the subject matter;" and accordingly the judgment of the trial court was reversed and the prisoner discharged.

In *Cone* v. *Felton*, (101 Mass. 204,) the defendant was charged with being an accessory to an embezzlement by an officer of a national bank, and it was said by the court:

"The difficulty in the way of holding the defendant upon the present indictment is that the act of Congress has taken the crime of the principal out of our jurisdiction, and our courts cannot deal with him upon that charge."

A law of the State of Kansas provided that no bank should receive deposits when it was insolvent, and prescribed a punishment for a violation of that provision by any officer or agent of such bank; but it was held by the Supreme Court of that State that the provisions of the State law had no application to national banks, and that the penalties prescribed were not operative as against officers of national banks. (*The State* v. *Menke*, 56 Kan. 77.)

The same view has prevailed in the lower Federal courts. In *Sutton Manufacturing Company* v. *Hutchinson*, (63 Fed. Rep. 501,) it was said by the Circuit Court of Appeals, through Mr. Justice Harlan:

"A corporation is not required by any duty it owes to creditors to suspend operations the moment it becomes financially embarrassed, or because it may be doubtful whether the objects of its creation can be attained by

further effort on its part. It is in the line of right and duty, when attempting in good faith by the exercise of its lawful power, and by the use of all legitimate means to preserve its active existence, and thereby accomplish the objects for which it was created."

In *In re Waite*, (81 Fed. Rep. 359,) it was held by the Circuit Court of the United States for the District of Iowa that a pension examiner of the United States was not liable to a criminal prosecution in the courts of a State for acts done by him in his official capacity. In the opinion it was said:

"The question which marks the limit of the State jurisdiction is whether the person sought to be called to account was acting under the authority of the United States when the acts complained of were done in and about a subject matter within Federal control, for the criminal statutes of a State are not applicable to acts done within the plane of Federal jurisdiction and under the authority of the United States. When, therefore, it appears in a criminal case pending in the State court that the acts charged in the indictment were done by defendant as an officer or agent of the United States in and about a matter within Federal control, then it is made to appear that the court is asked to assume a jurisdiction which it cannot rightfully exercise; and if that court entertains the case and proceeds to adjudicate on the question of the extent of the authority possessed by officers of the United States, testing the same by the provisions of State statutes, it proceeds at the peril of having its jurisdiction questioned and denied."

So, in *In re Thomas*, (82 Fed. Rep. 304,) it was held by the Circuit Court of the United States for the Southern District of Ohio that, the governor of the soldiers' home at Dayton, Ohio, in serving to the inmates, as food, oleomargarine furnished by the government, is not subject to the law of the State prescribing the manner in which oleomargarine shall be used in eating houses, because his act is that of the government of the United States within its constitutional powers, and wholly beyond the control or regulation of the legislature of the State.

This judgment was affirmed by this court in *Ohio* v. *Thomas*, (173 U. S. 276.)

A leading case in which this court had occasion to consider the limitation of legislation by a State affecting a subject within the scope of action by Congress is that of *Prigg* v. *Pennsylvania*, (16 Pet. 539,) from which we quote the following observations:

"If Congress has a constitutional power to regulate a particular subject, and does regulate it in a given manner and in a certain form, it cannot be that State legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it."

On the immediate subject of control over national banks it was said, in *Farmer's National Bank* v. *Dearing*, (91 U.S. 29):

The State can exercise no control over national banks, nor in anywise affect their operation, except so far as Congress may seem proper to permit; everything beyond this is an abuse, because it is the usurpation of power which a single State cannot give. The State has no power by taxation or otherwise to burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

This subject has received recent and careful consideration in the case of *Davis* v. *Elmira Savings Bank*, (161 U.S. 275,) twice argued in this court. The legislature of the State of New York had provided by law that savings banks, organized under the laws of that State, should have a preference as depositors in banks in case of the insolvency of such banks, and it was sought to apply this provision to the case of a deposit by a savings bank in a national bank which had subsequently become insolvent. But this court held that such a provision could not be extended by a State to national banks, because it was repugnant to that provision of the national banking act which requires the assets of an insolvent national bank to be ratably distributed among its creditors. In the opinion of the court, by Mr. Justice White, it was said:

"National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties or control the conduct of their affairs is absolutely void, whenever such attempted exercise of authority conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the Federal government to discharge the duties for the performance of which they were enacted. These principles are axiomatic, and are sustained by the repeated adjudications of this court."

Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations; that Congress has directly dealt with the subject of insolvency of such banks by giving control to the Secretary of the Treasury and the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent, or when they fail to make good any impairment of capital; that full and adequate provisions have been made for the protection of creditors of such institutions by requiring frequent reports to be made of their condition, and by the power of visitation by Federal officers; that it is not competent for State legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government.

Cross v. *North Carolina*, (132 U. S. 131,) was a case wherein this court pointed out the distinction between crimes defined and punishable at common law or by the general statutes of a State and crimes and offenses cognizable under the authority of the United States; and accordingly it was held that the crime of forging promissory notes, purporting to be made by individuals, and made payable to or at a national bank, was a distinct and separate offense, indictable under the laws of the State.

Undoubtedly a State has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction. So, likewise, it may declare, by special laws, certain acts to be criminal offenses when committed by officers or agents of its own banks and institutions. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.

It was by failing to observe the distinction between the two classes of cases that, we think, the courts below fell into error.

The judgment of the Supreme Court of Iowa is reversed, and the cause is remanded to that court to take further action not inconsistent with the opinion of this court.

True copy.

Test:

Clerk Supreme Court, U. S.